

MONTANA LEGISLATIVE HISTORY

Chapter 556 19 93

Bill H 323 S _____ Original bill & history ✓c

H. Committee on Judiciary

Hearing Date(s) 2-2 _____c

2-3 _____c

_____c

_____c

Date Out 2-3 _____c

S. Committee on Judiciary

Hearing Date(s) 3-5 _____c

3-17 _____c

3-27 _____c

_____c

DATE out 3-27

Did this bill originate in an interim committee? _____Yes _____No

Committee _____

Report _____

1/22	REFERRED TO TAXATION		
1/22	FIRST READING		
1/22	FISCAL NOTE REQUESTED		
1/26	FISCAL NOTE RECEIVED		
1/27	FISCAL NOTE PRINTED		
1/29	HEARING		
3/19	COMMITTEE REPORT—BILL PASSED AS AMENDED		
3/27	2ND READING PASSED	56	37
3/30	3RD READING PASSED	64	35
	TRANSMITTED TO SENATE		
4/01	FIRST READING		
4/01	REFERRED TO TAXATION		
4/06	HEARING		
4/08	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
4/12	2ND READING CONCUR MOTION FAILED	21	24
4/12	2ND READING INDEFINITELY POSTPONED	26	21
	(BILL RETURNED TO THE HOUSE)		
4/13	RECONSIDERED PREVIOUS ACTION		
	AND PLACED ON 2ND READING	37	12
4/14	(HOUSE RETURNED BILL TO SENATE		
	AT SENATE'S REQUEST)		
4/15	2ND READING CONCURRED AS AMENDED	34	15
4/15	3RD READING CONCURRED	39	10
	RETURNED TO HOUSE WITH AMENDMENTS		
4/16	2ND READING AMENDMENTS NOT CONCURRED	74	23
4/17	CONFERENCE COMMITTEE APPOINTED		
	SENATE		
4/20	CONFERENCE COMMITTEE APPOINTED		
	DIED IN PROCESS		

HB 323

INTRODUCED BY MCCARTHY, ET AL.

ALLOW PROHIBITION ON OWNERSHIP AGAINST ONE CONVICTED OF
CRUELTY TO ANIMALS

1/23	INTRODUCED		
1/23	REFERRED TO JUDICIARY		
1/23	FIRST READING		
2/02	HEARING		
2/05	COMMITTEE REPORT—BILL PASSED		
2/08	2ND READING PASSED	94	4
2/10	3RD READING PASSED	97	0
	TRANSMITTED TO SENATE		
2/12	FIRST READING		
2/12	REFERRED TO JUDICIARY		
3/05	HEARING		
3/29	TABLED IN COMMITTEE		
3/30	MOTION FAILED TO TAKE FROM COMMITTEE		
	AND PLACE ON 2ND READING	24	25
4/13	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
4/14	2ND READING CONCURRED	48	0
4/15	3RD READING CONCURRED	48	0
	RETURNED TO HOUSE WITH AMENDMENTS		
4/15	ON MOTION RULES SUSPENDED		
	TO CONSIDER AMENDMENTS FROM SENATE		
4/16	2ND READING AMENDMENTS CONCURRED	96	2
4/19	3RD READING AMENDMENTS CONCURRED	96	2
4/22	SIGNED BY SPEAKER		
4/23	SIGNED BY PRESIDENT		
4/24	TRANSMITTED TO GOVERNOR		

4/28 SIGNED BY GOVERNOR
CHAPTER NUMBER 556
EFFECTIVE DATE: 04/28/93

HB 324 INTRODUCED BY STOVALL, ET AL.
CONSTITUTIONAL AMENDMENT TO LIMIT EXPENDITURE AUTHORITY OF
BOARD OF PUBLIC EDUCATION

1/23	INTRODUCED		
1/23	REFERRED TO EDUCATION & CULTURAL RESOURCES		
1/23	FIRST READING		
2/01	HEARING		
2/08	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/12	2ND READING PASSED	59	40
2/15	3RD READING PASSED	57	39
	TRANSMITTED TO SENATE		
2/20	FIRST READING		
2/20	REFERRED TO EDUCATION & CULTURAL RESOURCES		
3/05	HEARING		
3/09	TABLED IN COMMITTEE		

HB 325 INTRODUCED BY MENAHAN, ET AL.
DEFINE POLLUTED PROPERTY FOR PURPOSES OF TAXATION

1/23	INTRODUCED
1/23	REFERRED TO TAXATION
1/23	FISCAL NOTE REQUESTED
1/23	FIRST READING
1/28	FISCAL NOTE RECEIVED
1/30	FISCAL NOTE PRINTED
2/05	HEARING
2/12	TABLED IN COMMITTEE

HB 326 INTRODUCED BY MENAHAN, ET AL.
DEFINE "RECREATIONAL LAND" FOR PURPOSES OF TAXATION

1/23	INTRODUCED
1/23	REFERRED TO TAXATION
1/23	FISCAL NOTE REQUESTED
1/23	FIRST READING
1/29	HEARING
1/30	FISCAL NOTE RECEIVED
2/02	FISCAL NOTE PRINTED
3/12	TABLED IN COMMITTEE

HB 327 INTRODUCED BY MCCAFFREE, ET AL.
CLARIFY APPLICABILITY OF \$5 MINIMUM PROPERTY TAX

1/23	INTRODUCED		
1/23	REFERRED TO TAXATION		
1/23	FISCAL NOTE REQUESTED		
1/23	FIRST READING		
1/26	HEARING		
1/28	FISCAL NOTE RECEIVED		
1/28	FISCAL NOTE PRINTED		
1/28	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/04	2ND READING PASSED	87	10
2/06	3RD READING PASSED	87	10
	TRANSMITTED TO SENATE		
2/09	FIRST READING		
2/09	REFERRED TO TAXATION		

House BILL NO. 323

INTRODUCED BY

Brian McCarthy Bush Menehara

Bevan M. Hanger Smith, William L. Nelson, Scott J. Harrington, Julie Wilbert, Dan Brown

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING A COURT, UPON

A SECOND OR SUBSEQUENT CONVICTION OF CRUELTY TO ANIMALS, TO

ENJOIN OR LIMIT THE DEFENDANT'S FURTHER OWNERSHIP,

POSSESSION, OR CUSTODY OF ANIMALS, AS THE COURT BELIEVES

APPROPRIATE; AND AMENDING SECTION 45-8-211, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 45-8-211, MCA, is amended to read:

"45-8-211. Cruelty to animals -- exception. (1) A person commits the offense of cruelty to animals if without justification he the person knowingly or negligently subjects an animal to mistreatment or neglect by:

(a) overworking, beating, tormenting, injuring, or killing any animal;

(b) carrying or confining any animal in a cruel manner;

(c) failing to provide an animal in his the person's custody with:

(i) proper food, drink, or shelter; or

(ii) in cases of immediate, obvious, serious illness or injury, licensed veterinary or other appropriate medical care;

(d) abandoning any helpless animal or abandoning any

animal on any highway, railroad, or in any other place where it may suffer injury, hunger, or exposure or become a public charge; or

(e) promoting, sponsoring, conducting, or participating in an animal race of more than 2 miles, except a sanctioned endurance race.

(2) A person convicted of the offense of cruelty to animals shall be fined not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both. A person convicted of a second or subsequent offense of cruelty to animals shall be fined not to exceed \$1,000 or be imprisoned in the county jail for a term not to exceed 1 year, or both. If the person is the owner, he the person may be required to forfeit to the county in which he the person is convicted any animal affected. This provision does not affect the interest of any secured party or other person who has not participated in the offense.

(3) In addition to the sentence provided in subsection (2), the court may:

(a) require the defendant to pay all reasonable costs incurred in providing necessary veterinary attention and treatment for any animal affected; and

(b) upon a second or subsequent conviction, enjoin or limit the defendant's further ownership, possession, or custody of animals, as the court believes appropriate.

LC 1125/01

1 (4) Nothing in this section prohibits:

2 (a) a person from humanely destroying an animal for
3 just cause; or

4 (b) the use of commonly accepted agricultural and
5 livestock practices on livestock."

-End-

COMMITTEE--HOUSE JUDICIARY

Page 4

- BILL NO - REFERRED - HEARING - OTHER CONSIDERATION DATES - EXECUTIVE ACTION/DATE/VOTE - REREFERRED - DATE READ

HB0323	MCCARTHY, BEA	1/23	2/02	INJUNCTION AGAINST ONE CONVICTED OF CRUELTY TO ANIMALS	DO PASS	2/3	VOTE: 18-0	2/05
HB0335	TOOLE, HOWARD	1/23	2/12	GENERALLY REVISE CHILD SUPPORT ENFORCEMENT LAWS	PASS AS AMENDED	2/16	VOTE: 18-0	2/18
HB0340	BROWN, DAVE	1/25	2/02	INCLUDE PURCHASE OR ATTEMPT TO PURCHASE ALCOHOL UNDER POSSESSION STATUTE	PASS AS AMENDED	2/4	VOTE: 16-2	2/08
HB0346	BENEDICT, STEVE	1/25	2/09	MEDICAL MALPRACTICE TORT REFORM	PASS AS AMENDED	2/19	VOTE: 10-8	2/20
HB0357	FAGG, RUSSELL	1/26	2/09	EXPAND CATEGORY OF PERSONS PROTECTED BY AIRCRAFT LIEN	PASS AS AMENDED	2/9	VOTE: 18-0	2/11
HB0370	MOLNAR, BRAD	1/27	2/10	ESTABLISHING INCENTIVES TO ATTRACT DOCTORS TO MEDICAL SHORTAGE AREAS	TABLED ON	02/13	VOTE: 15-2	APPROPRIATIONS
HB0396	WHALEN, TIM	1/30	2/04	REFUSAL OF DRIVER TO TAKE ALCOHOL TEST CAN'T AFFECT INSURANCE	PASS AS AMENDED	2/4	VOTE: 16-2	2/09
HB0405	FISHER, MARJORIE	1/30	2/05	CREATE CRIMINAL OFFENSE OF RITUAL ABUSE OF A MINOR	PASS AS AMENDED	2/9	VOTE: 17-1	2/11
HB0409	PAVLOVICH, BOB	1/30	2/05	SET REQUIREMENTS NECESSARY TO WAIVE INDIGENTS' FILING FEES IN COURT ACTIONS	DO PASS	2/5	VOTE: 18-0	2/08
HB0411	JOHNSON, ROYAL	1/30	2/05	DEPT. OF JUSTICE SUBSTANTIVE CHANGES TO GAMBLING LAWS	PASS AS AMENDED	2/12	VOTE: 18-0	2/17
HB0416	STRIZICH, BILL	2/01	2/10	REQUIRE REPORTING OF HATE CRIMES	PASS AS AMENDED	2/17	VOTE: 11-7	2/18
HB0429	STRIZICH, BILL	2/02	2/11	MAKE MANUFACTURE OF DANGEROUS DRUGS A SEPARATE OFFENSE; RAISE PENALTY	DO PASS	2/11	VOTE: 15-2	2/15

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN RUSSELL FAGG, on February 2, 1993, at 8:00 a.m.

ROLL CALL

Members Present:

Rep. Russ Fagg, Chairman (R)
Rep. Randy Vogel, Vice Chairman (R)
Rep. Dave Brown, Vice Chairman (D)
Rep. Ellen Bergman (R)
Rep. Jody Bird (D)
Rep. Vivian Brooke (D)
Rep. Bob Clark (R)
Rep. Duane Grimes (R)
Rep. Scott McCulloch (D)
Rep. Jim Rice (R)
Rep. Angela Russell (D)
Rep. Tim Sayles (R)
Rep. Liz Smith (R)
Rep. Bill Tash (R)
Rep. Howard Toole (D)
Rep. Tim Whalen (D)
Rep. Karyl Winslow (R)
Rep. Diana Wyatt (D)

Members Excused: None.

Members Absent: None.

Staff Present: John MacMaster, Legislative Council
Beth Miksche, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: HB 323, HB 340
Executive Action: HB 215, HB 81, HB 255, HB 253, HB 257

HEARING ON HB 323

Opening Statement by Sponsor:

REP. BEA MCCARTHY, House District 66, Anaconda, said this bill allows the court, after a second conviction of cruelty to animals, to limit the defendant's custody of animals. She said that she and her constituents have been trying to collect information for the last two and one-half years on what is

believed to be extreme animal cruelty occurring in Deer Lodge County. EXHIBIT 1

Proponents' Testimony:

Mr. Beaudett, County Attorney, Deer Lodge County, stated that Deer Lodge County is interested in this bill because of the magnitude of a current case. They are particularly concerned about the abuse to a large number of horses and dogs being maintained by this person.

REP. MCCARTHY said the present statute is inadequate because it does not address the issue of removing the animals from the situation after the penalty provisions have gone into effect. The amendment specifically seeks specific time tables for removing the animals from the custody after the second and third convictions of cruelty. He said that 31 other states have enacted statutes that deal specifically with provisions of removal of animals.

Dave Guhlke, Veterinarian, Anaconda, supported this bill and the ability to remove animals from an abusive situation.

John Siders, Animal Warden, Anaconda/Deer Lodge Counties, supported the bill.

Dave Pauli, Regional Director, Humane Society of the United States, Billings, stated that during 1992, in Montana alone, his office investigated over 30 cases of abuse. Animal cases are very difficult to investigate and prosecute; live animals are difficult to house and expensive to maintain. Non-profit organizations such as the humane society assist local prosecutors, but existing Montana statute does not provide the authority to compose long-term remedies to these problems. This bill adequately addresses the problem; it does not impose restrictions on legitimate business enterprises; and it gives the courts the discretionary power to guide the cases of an owner who cannot or will not solve the problem.

Michael Grayson, previous Deputy County Attorney, Anaconda, stated his belief that it is necessary to give courts more power in certain cases, and in extreme cases, to do more than fine a person and put him/her in jail. The courts should have the power to prevent future problems.

John Bloomquist, Attorney, Special Systems, Montana Stock Growers Association (MSGA), stated the MSGA solicits support for this bill.

Dr. Don Marksburg, Veterinarian, stated that the courts should be able to prevent people who cannot care for animals from having them.

REP. LIZ SMITH, House District 48, Deer Lodge, said the county is strongly affected by this case. She is concerned with disease control.

Opponents' Testimony: None.

Questions From Committee Members and Responses:

REP. VIVIAN BROOKE asked Mr. Beaudett how this problem should be enforced. Mr. Beaudett said it should be handled like a criminal matter.

REP. BOB CLARK asked Mr. Beaudett if taking the animals away from the owner would alleviate the problem. Mr. Beaudett emphasized that the point of the bill is to keep animals from harm and injury by taking them away from the owner.

Closing by Sponsor:

REP. MCCARTHY withdrew the amendments and asked that the bill, if passed, be effective upon passage and approval.

HEARING ON HB 340

Opening Statement by Sponsor:

REP. DAVE BROWN, House District 72, Butte, stated that the purpose of this bill is to remove the responsibility from the bartender or the person selling alcohol to a minor and to put it on the minor purchasing the alcohol. REP. BROWN asked the committee to ignore the changes on the first two pages because they are all Legislative Council gender-related amendments. Page 3, lines 12-16, establishes a new offense of "attempt to purchase" for which there is a \$50 fine. This will have a substantial impact on those youths still living at home and is an attempt to start out in this area to see how effective this penalty would be. The new section on page 4, line 9, essentially gives the tavern owner some protection from youngsters that try to buy alcoholic beverages with fake IDs who look like they're 25 when, in fact, they're only 20. This is a bill that attempts to balance both those sides.

Proponents' Testimony:

Mark Staples, Montana Tavern Association, stated that trying to buy beer has become a sport for minors, and there's basically no disincentive to the effort. It is a crime to use a fake ID, but this is a separate charge. The fine for serving under-age

HOUSE OF REPRESENTATIVES

Judiciary

COMMITTEE

ROLL CALL

DATE

2-2-93

NAME	PRESENT	ABSENT	EXCUSED
Rep. Russ Fagg, Chairman	✓		
Rep. Randy Vogel, Vice-Chair	✓		
Rep. Dave Brown, Vice-Chair	✓		
Rep. Jodi Bird	✓		
Rep. Ellen Bergman	✓		
Rep. Vivian Brocke	✓		
Rep. Bob Clark	✓		
Rep. Duane Grimes	✓		
Rep. Scott McCulloch	✓		
Rep. Jim Rice	✓		
Rep. Angela Russell	✓		
Rep. Tim Savles	✓		
Rep. Liz Smith	✓		
Rep. Bill Tash	✓		
Rep. Howard Toole	✓		
Rep. Tim Whalen	✓		
Rep. Karyl Winslow	✓		
Rep. Diana Wyatt	✓		

HR:1993

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CS-09

Animal cruelty charges filed

Attorney W.G. Gilbert III of Dillon, representing a Ga-

len-area woman, appeared in Anaconda-Deer Lodge County Justice Court Thursday where his client was charged with animal cruelty.

Mary Kellogg, 1180 Yellowstone Trail, is charged with cruelty to animals, not having rabies vaccinations for her dogs and not having a kennel license.

Kellogg is scheduled to appear before Justice of the Peace Lorraine Biggs Oct. 17 to answer the charges, which originated with the recent discovery that hundreds of horses may be starving to death.

The allegations were made by investigating law enforcement officers after neighbors complained that there was not enough forage or other feed available for her animals. According to court documents, nearly 370 horses are on the property.

The rabies and kennel license charges were brought because there are at least 40 dogs on her property and they are allegedly not properly vaccinated.

Meanwhile, the county switchboard has been swamped with calls from citizens offering help and emergency food supplies, according to operator Bobbie Austin.

Anaconda / Area

Horse owner charged with cruelty

Mary Kellogg to plead Oct. 17, authorities negotiate to feed animals

By Duncan Adams
Standard Staff Writer

A Galen-area woman sent her attorney Thursday to Anaconda-Deer Lodge County Justice Court on her behalf to hear a charge of cruelty to animals stemming from concern about hundreds of horses on her ranch.

Attorney W.G. Gilbert of Dillon appeared before Justice Lorraine Biggs on behalf of Mary Kellogg, who owns a ranch at 1180 Yellowstone Trail. Kellogg was charged with cruelty to animals, a misdemeanor, and with failing to have rabies vaccines and a kennel license for 44 dogs on her property.

She was scheduled to enter a plea

to the charges Oct. 17.

According to County Attorney Sherry Petrovich-Staedler, in addition to having more than 300 horses, Kellogg owns approximately 77 dogs.

"That's her count," said Petrovich-Staedler.

The criminal complaint accompanying the cruelty to animals charges alleges that Kellogg "without justification, knowingly or negligently subjected approximately 368 horses to mistreatment and neglect by failing to provide (them) with proper food, drink and shelter ..."

Petrovich-Staedler would not release the report of veterinarian Mark Ransford, who visited the ranch Wednesday with police.

But her description of Ransford's

She does have some horses that are in very good condition But she's got a big group of them that don't look so good

write-up of that visit indicated conditions at the ranch might not be as bad as first believed.

"She does have some horses that are in very good condition. But she's got a big group of them that don't look so good," said Petrovich-Staedler.

She added that authorities who served a search warrant on Kellogg Wednesday believe they may have missed some of the animals in the roughest shape. A videotape in police possession shows horses that police did not see Wednesday, she said.

"The vet's report is based on horses they saw yesterday. The does say that those horses are in good condition, but they're not to point of starvation," said Petrovich-Staedler.

Meanwhile, authorities are negotiating with Kellogg and her attorney to allow the city-county to begin feeding the horses. And Kellogg reportedly has been forbidden to sell any of the animals until the questions and charges are resolved.

According to a police report, Kellogg has received at least one harassing telephone call since the investigation regarding her horses came public. That report, made by Kellogg, described a phone call from an unidentified female who said, "You're disgusting. I'll see you."

Court orders Galen rancher to obtain mental evaluation

Evaluation might look at 'animal addiction'

By Duncan Adams
Standard Staff Writer

They say a dog is man's best friend. Perhaps Roland said it more succinctly: "The more I see of men, the better I like dogs."

Truth is, both everyday experience and scientific research suggest that animals do soothe a human's everyday cares.

Many researchers also claim that a small and daily glass of wine can offer a fine if fleeting solace.

But just like there are those whose quest for relaxation takes them past a glass of wine to a bottle or two, there are those whose affinity



GRAYSON

for animals occasionally gets out of control.

To date, no one has officially argued that rancher Mary Kellogg of Galen, convicted of cruelty to animals and recently sentenced to serve four days in jail, suffers from what some researchers call "animal addiction."

But prosecutors in Anaconda-Deer Lodge County, and Justice of the Peace Lorraine Biggs, have recommended that Kellogg seek an evaluation of her mental health.

A range analysis expert has concluded that Kellogg's ranch provides pasture enough to support only 44 mature horses year-round without supplemental feeding. Yet, according to court records, Kellogg has had more than 270 horses on her ranch in recent months.



A horse found last fall on Mary Kellogg's ranch

At one point, records show, she also had dozens of dogs.

During a court hearing Thursday, Justice Biggs ordered Kellogg to reduce her herd of horses to 100 head by July 7.

Dr. Karen Kemper, a veterinarian for the city of Houston's Animal Control Bureau, has made a study of the phenomenon of "animal addiction."

According to a July 1991 article by Evan Moore in the "Houston Chronicle," Kemper believes behaviors associated with animal addictions share characteristics with traits identified in connection with substance abuse.

According to Moore's article, those "10 parallels of behavior" are:

- A preoccupation with the addiction.
- Repetition or cycling of the addictive behavior.
- Alibis for behavior.
- Neglect of personal, physical and environmental conditions.

- Claims of persecution.
- Presence of enablers, people who help continue the addiction.
- Denial that the addiction exists.
- Isolation from the rest of society except those who also deal in the addiction, such as enablers.
- Abuse of animals through neglect.
- Have been committed at least once and found sane.

Kellogg was charged in October with cruelty to animals for her alleged neglect of scores of horses on her ranch. In December, she received a deferred sentence, with conditions for that charge.

Recently, however, Kellogg, 44, and her husband, William, 52, were in court on a new charge of cruelty to animals. Both entered an Alford plea of guilt to those charges Thursday, and sentencing was set for July 7.

Justice Biggs also revoked Mary Kellogg's earlier deferred sentence, citing failure to comply with court conditions defining recommendations for proper care of the animals on her ranch.

Biggs sentenced Kellogg to six months, with all but four days in jail suspended, and ordered her to reduce the size of her herd of horses.

And she reiterated the court's directive for Kellogg to participate in a mental health evaluation.

There was talk during Thursday's hearing of a "referral question" for a mental health professional to consider during his or her evaluation of Kellogg.

On Friday, Deputy County Attorney Michael Grayson was asked whether that referral question, from his perspective, might ask an evaluator to consider the possibility of animal addiction.

"I think that's what we have in mind as a referral question," Grayson replied. "That's certainly what I was looking at, and I think that's what the court was looking at, too."

Grayson says prison endangering w

Horses get food, probe continues

By Duncan Adams
Standard Staff Writer

The animal control warden for Anaconda-Deer Lodge County began feeding horses Friday at a ranch near Galen where authorities believe many of the horses have been starving.

"I went down and fed the horses, Friday and Saturday," said animal control warden John Siders on Monday.

Siders said the "horses almost tore my truck apart," trying to get at the hay he was delivering.

Around 4 p.m. Friday, Siders called in to report to police that he had found a horse dead on the ranch, owned by Mary Kellogg, at 1180 Yellowstone Trail.

On Monday, Siders said an autopsy is being performed on the horse, which may have died from causes unrelated to malnutrition.

The horse, said Siders, "appeared to have some meat on it," unlike many of Kellogg's 300-plus horses. Authorities have said they fear some of these animals do not have the necessary reserves to live through a Montana winter.

Kellogg was charged in Anaconda-Deer Lodge County Justice Court Thursday with cruelty to animals. Records show she is accused of "failing to provide (the horses) with proper food, drink and shelter."

She is scheduled to enter a
Please see FOOD Page 8

Food . . .

(Continued from Page 1)

plea to that charge, a misdemeanor, on Oct. 17.

Police Chief Jim Connors said Monday that officials have not yet worked out the legal issues and logistics involved in the city-county's role in providing for the horse. For example, Connors said, the city-county has not identified an appropriate place for storing hay and other feed donated by area residents.

For that reason, Siders said, "I was told to hold off just a little bit longer" before actively soliciting additional donations of feed for the horses.



Oct 9- 1991

Starving horses focus of inquiry

WED OCTOBER 9, 1991

By Duncan Adams
Standard Staff Writer

What may be the largest cruelty to animals case currently under investigation in the United States is gradually coming to light in Anaconda-Deer Lodge County.

The city-county's animal control warden is desperately seeking feed and other assistance for more than 300 head of horses believed to be starving at a ranch in the Deer Lodge Valley.

Meanwhile, police chief Jim Connors says authorities are investigating the horses' dire circumstances. He said the ranch owner, Mary Kellogg of Yellowstone Lane, was charged Oct. 3 in justice court with cruelty to animals, a misdemeanor.

"The statement has been made that the horses' hipbones are sticking out so bad that you could hang a hat on them," Connors said.

During a interview Tuesday, animal control warden John Siders said charges of cruelty to animals can be difficult sometimes to prove in court. But for Siders, the evidence seems clear enough. He said he has knowledge of horses at the ranch eating their own dung for lack of other food.

Siders said he has solicited and received real or promised aid from several humane societies in other Montana cities and towns and from a national humane society. And, he said, a local man has agreed to donate a haystack. But, he said, additional feed will be required to keep the animals alive through the winter.

Connors reported that approximately 250 horses are being kept in Anaconda-Deer Lodge County, with an additional 67 head across the line in Powell County.

The chief said Siders has been tracking the case on his book the animal control job last May.

Connors said Kellogg has refused to part with the horses, even to prospective buyers, and, he said, "there's absolutely no pasture" at the Kellogg ranch.

"I don't know what's going to happen to them," he said.

"She swears she's feeding them. But you can't have to know much about horses to see that they're starving."

EXHIBIT

DATE 2-2-93

HB 323

Oct 10- 1991

Officer: Horses in poor shape

Police veterinarian say animals lack hay for winter

By Duncan Adams
Standard Staff Writer

Two police officers, an animal control warden, and a veterinarian served a search warrant Wednesday afternoon at a ranch near Calen here, at which authorities say hundreds of horses are starving.

Anaconda-Deer Lodge County Police Capt. Michael Softich, Lt. Jack Eklund, animal control warden John Siders and Philipsburg veterinarian Dr. Mark Ransford reportedly were met at the ranch by its owner, Mary Kellogg, and her attorney.

Siders said later at his tour of the ranch confirmed fears about the condition of many of the horses there.

"I feel they're in very poor shape," said Siders.

Siders and Police Chief Jim Connors seemed to speak more cautiously Wednesday about conditions at the ranch, noting the potential complexity of legal issues associated with charging Kellogg with cruelty to animals.

Connors clarified Wednesday that Kellogg had not yet appeared in justice court. He had said she'd made an initial appearance on Oct. 3. But he was scheduled to appear Thursday on a misdemeanor charge citing cruelty to animals, he said.

Siders was tight-lipped, too, when asked to describe the findings of Ransford.

"He's writing up his report," Siders said. "He said that the pas-

ture is overgrazed and that the horses have no reserves to go into the winter.

"She needs to get some hay out there," Siders added.

Kellogg would not talk to a reporter who stopped at her ranch-house on Yellowstone Trail Wednesday. A woman at the house said Kellogg was not feeling well.

But a member of a ranching family in the Deer Lodge Valley was willing to share her feelings about the Kellogg controversy on the condition she not be identified.

"I'm so glad something finally is being done," she said, adding that many area ranchers have been concerned about the horses at the Kellogg spread.

"I'm upset with these people because they keep breeding these horses year after year. I don't know why they don't sell a few so they can feed the ones they have," she said.

Gesturing toward some thin and apparently lethargic horses grazing in a parched field nearby, the woman pointed out one horse's protruding hip bones.

"These are yearlings from last year, and they're just starving to death," she said.

Siders said Wednesday that officials have estimated it will require approximately three tons of hay per day to keep all the horses, most of them Arabians, alive.

"That's bare minimum," Siders said. "My horse gets at least 30 pounds of hay per day, plus a quart

Please see HORSE Page 8

SEE NEXT
PAGE

Horse investigation . . .

(Continued from Page 1)

of oats."

Siders said officials do not yet have an accurate count of the total number of horses owned by Kellogg. However, he said authorities believe there are more than 300 horses at the ranch.

"It's not definitely clear how many there are. It would be almost impossible to get a completely accurate account," Siders said, adding that he walked more than five miles Wednesday searching pastures on the ranch and tallying horses.

He was asked to describe Kellogg's reaction to the appearance of police Wednesday afternoon.

"She was cooperative. Of course, when you have a search warrant served on you, most people are (cooperative)," he said.

Siders said he had received at least six calls Wednesday from peo-

ple offering some kind of assistance for the horses. But neither he nor Connors has an idea yet how the problems at the ranch will be resolved.

The National Humane Society is keeping tabs on the case, Siders said. And Powell County authorities are assisting the investigation, he said, since some of Kellogg's horses

are pastured in that county.

The woman who said area ranchers have been watching the Kellogg spread said she has "been trying to keep track of all the horses" there.

"There was the prettiest little black colt I used to see. I haven't seen it recently. I hate to think what might have happened," she said.

Subject of charges

OCT 11
1991



Staff photo by Walt Hinick

THIS HORSE, intermingled with healthier looking companions, was photographed Thursday on Mary Kellogg's ranch on Yellowstone Trail near Galen. Kellogg was charged Thursday in Anaconda Justice Court with cruelty to animals. A story is on Page 5.

New cruelty counts filed

Prosecutor claims Galen couple let animals die

By Duncan Adams
Standard Staff Writer

This time the charges do not specify the animals are starving. This time the charges say 10 of the horses, "mostly colts," two dogs, two calves, and a goat are dead.

A Galen-area rancher, Mary A. Kellogg, 44, Yellowstone Trail, pleaded innocent Friday afternoon in Anaconda-Deer Lodge County Justice Court to cruelty to animals, second offense.

Her husband, William Kellogg, 52, pleaded innocent to cruelty to animals, first offense.

Deputy County Attorney Michael Grayson would not comment specifically about the new charge filed against Mary Kellogg, who received a deferred sentence in December for a previous charge of cruelty to animals.

But a motion Grayson filed last week to revoke Mary Kellogg's deferred sentence offered specific allegations accompanying the latest

proved check of the defendant's property," Grayson's motion alleges.

"Siders states that all of the animals are believed to have died since the court's judgment (in December)," the motion adds, a judgment that directed Kellogg to comply with official recommendations for the care and feeding of her horses.

Grayson's motion included other grounds for his petition to revoke Mary Kellogg's deferred sentence:

- That she allegedly failed to comply with a court order to submit evidence by Feb. 11 to Justice of the Peace Lorraine Biggs that Kellogg had participated in an evaluation of her mental health.

- That Kellogg has not been feeding her horses enough hay based on recommendations for supplemental feeding resulting from a range analysis of her property by MSU professor John R. Lacey.

According to court records, Lacey reportedly determined that Kellogg's ranch could support only

EXHIBIT 1DATE 2-2-9311 AB323

New animal cruelty charges . . .

(Continued from Page 1)
for supplemental feeding of Kellogg's horses suggest she should be supplying more than two tons of hay per day to properly feed her herd. But, Grayson's motion charges, "... Siders has documented that the defendant is only feeding about one-half ton of hay per day total."

A hearing to consider Grayson's motion has been scheduled tentatively for next Thursday in justice court.

The Kelloggs were represented during the court appearance Friday by attorney Kevin Vainio of Butte. After his clients' appearance, Vainio was asked by a reporter to respond to the charges filed against

Siders states that all of the animals are believed to have died since the court's judgment (in December)

the Kelloggs.

"Just that we deny the charges and the accusations," Vainio said.

He added that he believed earlier accounts last fall in *The Montana Standard* of the situation at the Kellogg ranch were unfair and not an accurate portrayal of conditions there.

Asked whether she had a statement about the latest charge filed

against her, Mary Kellogg replied, "Not at this time."

A police citation accompanying the cruelty to animals charges against the Kelloggs alleges that they "negligently" starved 10 horses to mistreatment and neglect by failing to provide proper food, drink, shelter, and proper licensed (veterinary) care to seriously-ill animals."

Anaconda / Area

Trial set in horse neglect case

By Duncan Adams
Standard Staff Writer

A Galen-area woman is scheduled to go to trial this month on charges she has neglected and mistreated scores of horses on her ranch.

Mary Kellogg, who owns a ranch at 1180 Yellowstone Trail in the Deer Lodge Valley, is scheduled to appear Dec. 19 in Anaconda-Deer Lodge County Justice Court for a bench trial on a misdemeanor charge of cruelty to animals.

On Oct. 18 in Justice Court, Kel-

logg pleaded innocent to that charge and accompanying allegations she had failed to provide rabies vaccinations for 44 dogs and did not have a kennel license.

On Tuesday, Deputy County Attorney Michael Grayson acknowledged that the local animal control warden, John Siders, has been making regular visits to the Kellogg ranch. Kellogg's attorney reportedly agreed to those visits after charges were filed against her.

In early October, the county attorney's office charged that Kellogg allegedly, "without justification,

knowingly or negligently subjected approximately 368 horses to mistreatment and neglect by failing to provide (them) with proper food, drink and shelter..."

When the news first broke of the ongoing investigation of the condition of horses at the ranch, Police Chief Jim Connors said a number of the animals were in poor condition.

"The statement has been made that the horses' hipbones are sticking out so bad that you could hang a hat on them," Connors said at the time.

Subsequent visits to the ranch by

a veterinarian have determined that some of Kellogg's horses are in good condition, while others "don't look so good," according to County Attorney Sherry Petrovich-Staedler.

Since the charges were filed, Siders has provided supplemental feed to the horses on occasion. After one such visit in early October, Siders said horses on the ranch "almost tore my truck apart" trying to get at feed he was delivering.

Grayson would not comment Tuesday about details of the county's case against Kellogg. He did say state law provides for a \$500

fine and/or six months in the county jail as a maximum penalty for first offense of cruelty to animals.

In addition, an animal owner convicted of cruelty to animals "may be required to forfeit to the county in which he is convicted any animals affected," Grayson said, reading from state statutes.

Under the law, any forfeiture of animals would be limited to those shown to have been mistreated, he said. Asked whether such a determination would be made by a veterinarian, Grayson replied, "That would be logical."

Unjust treatment of animals

I was shocked and appalled to read in The Montana Standard of horses, goats, dogs being starved to death in Anaconda-Deer Lodge County once again. Why weren't these animals taken away

from this party? Why didn't the animal warden check these animals out? Maybe these animals would still be around today.

There must be something done to stop this cruel and unjust treatment of these animals. How many more animals must suffer before something is done right?

I truly hope the Anaconda-Deer Lodge officials do something different and that justice is served.

I hope justice is served for the many animals who really suffered a needless, senseless death. — LEE ROY DEJOHN, 2823 George

EXHIBIT

DATE 9-2-93

HB 323

The Montana Standard, Butte, Friday, March 6, 1992—1

Anaconda / Area

Deferred sentence revoked

Mary Kellogg must serve 4 days in jail for violating terms

By Duncan Adams
Standard Staff Writer

An Anaconda justice of the peace decided Thursday to revoke a deferred sentence of a Galen-area woman for violations of court conditions accompanying a cruelty-to-animals conviction in December.

Justice Lorraine Biggs sentenced rancher Mary A. Kellogg, 44, of Yellowstone Trail to six months with all but four days in jail suspended for failure to comply with conditions of her deferred sentence.

Kellogg and her husband, William Kellogg, 52, also entered Alford pleas of guilty to more recent charges of cruelty to animals. Accepting a recommendation by Deputy County Attorney Michael Grayson, Biggs set sentencing for those charges for July 7, allowing the Kelloggs time to reduce their herd of some 200 horses to 100 head.

Biggs warned the Kelloggs that

failure to comply with the herd reduction or with other court conditions could have serious consequences.

She told the Kelloggs that if they did not become "caring and responsible ranchers," her "next action just might include an auction sale and (an order) forbidding you to have any animals."

Grayson recently filed a motion to revoke Mary Kellogg's deferred sentence, citing allegations that she and her husband have continued to neglect animals on their ranch.

"According to Animal Warden John Siders, bodies of 10 horses (mostly colts), two calves, two dogs, and a goat were found by him on Feb. 12, 1992, during a court-approved check of the defendant's property," Grayson's motion alleged.

"Siders states that all of the animals are believed to have died since the court's judgment (in

December)," the motion added, a judgment that directed Kellogg to comply with official recommendations for the care and feeding of her horses.

Grayson's motion included other grounds for his petition to revoke Mary Kellogg's deferred sentence:

- That she allegedly failed to comply with a court order to submit evidence by Feb. 11 to Biggs that Kellogg had participated in an evaluation of her mental health.

- That Kellogg has not been feeding her horses enough hay based on recommendations for supplemental feeding resulting from a range analysis of her property by MSU professor John Lacey.

According to court records, Lacey reportedly determined that Kellogg's ranch could support only 44 mature horses year-round without supplemental feeding. Records show veterinarian Phil Murphy counted approximately 275 horses during a recent visit to the Kellogg

ranch.

Grayson alleges that calculations for supplemental feeding of Kellogg's horses suggest she should be supplying more than two tons of hay per day to properly feed her herd. But, Grayson's motion charged that Siders had "documented that the defendant is only feeding about one-half ton of hay per day total."

The Kelloggs were represented during their court appearance Thursday by attorney Kevin Vainio of Butte. Vainio argued that his clients attempted to comply with court conditions related to care of animals on their ranch.

"I would ask the court for leniency," Vainio said before sentencing. "They've tried to comply ... They've been working out there night and day trying to get these horses back into shape."

And Vainio argued that there are questions about why the horses on the ranch continue to be sick.

"We just don't have adequate proof about what the problems out there with these animals," said, noting theories that the animals could be suffering because of worms or because of "environmental toxicity" tainting the pastures where they graze.

Grayson countered that other potential issues notwithstanding, the Kelloggs still owned "an unmanageably large herd" for acreage available for grazing.

Biggs agreed. She set three conditions for the Kelloggs to meet reduction of their herd. By April 7, the herd must be down to 200 head; by May 30, down to 150 head; and by July 7, down to 100 head.

And Biggs told the Kelloggs the problems on their ranch concern both to local people and residents statewide.

"Your neighbors around here are concerned about the welfare of these animals," she said.

ANACONDA

Justice Court

Couple sentenced for contempt

Mary and William Kellogg were each sentenced in Anticongda-Deer Lodge County Justice Court to six months in jail for criminal contempt for failure to abide by the conditions set by the court Thursday.

Mary Kellogg will serve her sentence five days at a time while William Kellogg will serve his sentence three days at a time. They will also be responsible for paying their own jail fees.

According to Judge Lorraine Biggs, the Kelloggs did not comply with the conditions of their sentence because they did not file the veterinary reports they were ordered to file. In addition, they did not have a planned grazing system and they did not supply a list of the animals in their possession and the names of their owners. Animal Warden John Siders stated that there were 90-98 head of horses on the property at the last count.

The Kelloggs last appeared in justice court with their attorney, Kevin Vainio, on Oct. 28 for a revocation hearing concerning a sentence given to the Kelloggs in December 1991 after the Kelloggs entered an Alford plea of guilty to charges of cruelty to animals.

At that time Biggs ordered a state financed veterinary inspection of the herd of horses under the Kelloggs' care before she made a ruling on the revocation.

During the October revocation hearing Deputy County Attorney Michael Grayson and Siders attempted to prove that the Kelloggs had not complied with the terms of their sentences by showing that as of 12:05 p.m. that day the Kelloggs still had over 100 head of horses on their property and they did not file the requested monthly written reports on the status of the animals' health.

Vainio and the Kelloggs stated that they have tried to comply with the order and by the end of Oct. 28 or at the latest, by the end of Oct. 29 the herd on their ranch would be down to 100 head. They had been moving horses when Siders was on their property counting horses at noon the day of the hearing.

The sentence originally given to the Kelloggs was a one year deferred imposition with conditions and fines of \$500 with a \$15 surcharge. The conditions of Kellogg's sentence were devised by Biggs and Grayson.

The conditions were as follows:

- Veterinarian Phil Murphy of Deer Lodge would conduct monthly inspections of the Kellogg ranch and the Kelloggs were to comply with any recommendations Murphy had for the feeding or care of the horses.

- In addition to the veterinary visits, range management specialists would also visit Kellogg's ranch to determine the appropriate number of horses the ranch can support.

- The 35 horses that appeared to be in bad shape must be brought into decent shape or sold by Kellogg.

- Kellogg will be required to seek and complete a mental

health evaluation within 60 days and a report must be filed with the court.

The veterinary visits to the ranch were to be paid for by Kellogg. Grayson explained that Dr. Murphy had discontinued services for the Kelloggs because they allegedly would not pay their veterinary expenses.

According to Grayson the herd was supposed to be reduced by July 1, 1992, but due to a series of troubles that befell the Kelloggs extensions were granted. Wednesday was the final extension date for the herd reduction.

Forfeitures

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EXHIBIT

DATE 2-2-93

HB-323

Anaconda / Area

Area ranchers get jail time

For contempt
in not caring
for animals as
ordered by court

By Tina Vander Veer
Standard Staff Writer

Two Galen ranchers who have been accused of cruelty to animals were given jail sentences Thursday or not complying with a court order to properly care for horses, dogs and rabbits on their property.

After a five-hour hearing, Anaconda-Deer Lodge Justice of the Peace Lorraine Biggs found Mary Kellogg, 44, and her husband William Kellogg, 52, both of 1180 Yellowstone Trail, guilty of criminal contempt of court, a charge that carries a maximum six-month jail sentence and \$500 fine.

Monthly installments

Mary Kellogg was sentenced to 30 days in jail each month for the next six months, and William Kellogg was sentenced to three days in jail each month for the next six months.

"They will have to pay the county \$50 in advance for each night they spend in jail.

In a scathing speech from the bench, Biggs told the couple that she was impatient with their refusal to comply with court orders, and cited their behavior "an absolute violation of humane treatment of animals."

'Sick to death'

"I'm sick to death of having to have you come in here," Biggs said.

Biggs ordered the Kelloggs to manage their range in a more effective way, reduce the number of horses on their property, and provide the court with a list of all the horses and owners of horses that are or have been on their ranch.

Biggs also set up a committee of interested groups, such as the Humane Society, to help the Kelloggs obtain adequate care for their animals.

Might lose rights

If the Kelloggs do not comply with the court's mandates, Biggs said she would consider stripping the couple of their right to own animals.

The Kelloggs and their lawyer, Kevin Vainio of Butte, argued that they have taken steps to decrease their herd size by taking about 30 head to Garrison and pasturing others in Gallatin County, leaving fewer than the mandated total of 100 horses on the Galen property.

But under cross-examination, Mary Kellogg said she did not know where in Gallatin County her horses are, nor how many horses were

moved there. She said she had no bills of sale for the animals, and that they weren't examined by the brand inspector before the move.

'Playing games'

Judge Biggs said that by taking horses out of the county rather than selling them as the court ordered, the Kelloggs were "playing games" with the court.

"You have deliberately misconstrued the court's order to release animals under your care by moving them to other counties," she said.

Biggs added that the apparent reduction in the horses' numbers did not free the Kelloggs from responsibility in the court's eyes.

"It's not just the numbers of these horses," she said. "I'm concerned about the care of these horses."

Vet testifies

Biggs' decision came after testimony from the county animal warden, a Philipsburg veterinarian assigned by the court to inspect the animals on the ranch, Mary Kellogg herself, and a neighbor of the Kelloggs, Mark Jones.

The warden, John Siders, produced photos of a horse with a

large abscess running with pus, dogs in a muddy kennel, and dog food covered with mold, all taken at the ranch.

He testified that he counted as many as 177 horses on the ranch as late as Oct. 27, and said conditions hadn't improved on the ranch since the December court order.

'Fair shape at best'

The vet, Dr. Mark Ransford, said that most of the horses were in "fair shape at best" and that many of the younger or weaker horses were in worse condition than that.

"You could see ribs, you could see pinbones," he said. He added that the animals were lethargic and unalert.

"These horses weren't broken, but I could walk right through them," he said.

Some horses had skin growths, infections or swollen limbs and were in need of veterinary care, he said. Others showed signs of stunted growth or needed a farrier.

Dogs have worms

An autopsy of one six-year-old horse showed that the animal probably died of malnutrition, he said.

When he inspected the ranch's 70-odd dogs in April, Dr. Ransford said he found them to be "thin to adequate," but infested with at least three kinds of worms.

The kennels were muddy, didn't provide shelter for the dogs and didn't provide adequate food and water for them, he said.

"The dogs were in the dirt and mud, with no way to get out of the dirt and mud," he said.

Barn called filthy

Dr. Ransford said the

collies had worms, claiming she wormed them once a month with Ivermectin.

But when the veterinarian pointed out that Ivermectin, a 1 stock dewormer, is often fatal to collies, Kellogg said her dogs were a special strain of collies not susceptible to the effects of Ivermectin.

Neighbor defends

The Kellogg's neighbor, A. Jones, testified that many of the rabbits at the ranch were his, that the Kelloggs adequately cared for their animals.

In closing arguments, DeWitt County Attorney Mike Gray noted that Mary Kellogg refused to accept the opinions of veterinarian and range experts as valid, substituting her own authority instead.

"She thinks everything is fine," he said. "Mrs. Kellogg won't acknowledge this, and doesn't even see there's any problem."

Alford to cruelty

In December, Mary Kellogg entered an Alford plea to a charge of cruelty to animals. In an Alford plea, the plaintiff does not admit guilt, but concedes that there is enough evidence to convict him of a crime.

At that time, Biggs issued a court order, specifying that Mary Kellogg would have to feed and adequately care for all the animals on her property within six months.

Those conditions were bolstered after both Kelloggs entered Alford pleas to new charges of cruelty to animals in February.

They were ordered to reduce their 260-head herd.

ANACONDA

Calendar

- AA meets at 8 p.m. Friday in the basement of St. Peter's Church, Fourth and Alder streets.
- Well child clinics are held once a month at the Anaconda/Deer Lodge public health office. No charge for immunizations and anyone is eligible. Call 563-7863 or stop by 115 W. Commercial for an appointment.
- AA meets at 9 a.m. Saturday in the Rarus Railroad Building

Anaconda funerals

Justice for

come in here," Biggs said. "I ordered the Kelloggs to move their range in a more effective way to reduce the number of horses on their property, and the court with a list of all the owners of horses that have been on their ranch. I also set up a committee of groups, such as the Humane Society, to help the Kelloggs provide adequate care for their animals."

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The kennels were muddy, didn't provide shelter for the dogs and didn't provide adequate food and water for them, he said.

"The dogs were in the dirt and mud, with no way to get out of the dirt and mud," he said.

Barn called filthy

Dr. Ransford said the animals that bothered him the most were the 80 rabbits housed in one of the ranch's barns.

The rabbits' hutches, stacked four deep, didn't have trays covering the bottoms of each cage, so that rabbits above could defecate on rabbits below, he said.

The barn itself also was filthy, he said. "When I walked into the room of the rabbits, I could hardly breathe, the smell of ammonia was so overpowering," he testified.

Mary Kellogg attempted to provide explanations for all the evidence presented against her.

Mary Kellogg speaks

She said the hutches smelled because they recently had been cleaned of waste; that the horse's abscess had been treated by a veterinarian and by herself; that her farrier had been injured and hadn't been able to attend to the horses for a year; that the stunted horses are actually naturally-occurring pony-sized American Saddlebred horses; that the dogs' kennels were covered with gravel twice a year and that the animals had adequate shelter; and the whitish material on the dog food was not mold, but goat's milk.

At one point, she denied her

Ivermectin.

But when the veterinarian pointed out that Ivermectin, a livestock dewormer, is often fatal to collies, Kellogg said her dogs were a special strain of collies not susceptible to the effects of Ivermectin.

Neighbor defends

The Kellogg's neighbor, Mark Jones, testified that many of the rabbits at the ranch were his, and that the Kelloggs adequately cared for their animals.

In closing arguments, Deputy County Attorney Mike Grayson noted that Mary Kellogg refused to accept the opinions of veterinary and range experts as valid, substituting her own authority instead.

"She thinks everything is fine," he said. "Mrs. Kellogg won't acknowledge this, and doesn't even see there's any problem."

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At that time, Biggs issued a court order, specifying that Mary Kellogg would have to feed and adequately care for all the animals on her property within six months.

Those conditions were bolstered after both Kelloggs entered Alford pleas to new charges of cruelty to animals in February.

They were ordered to reduce their 260-head herd to 200 by April 30, 150 head by May 30, and 100 head by July 9.

Mary Kellogg was sentenced to four days in jail for the offense.

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The Montana Standard

The Montana Standard

EXHIBIT 1
DATE 2-2-93
HB-323

Anaconda Leader, F.

JP, police chief named **Couple's lawyer files writ of habeas corpus**

By Frank Hamilton
Leader Staff Writer

Attorney Kevin Vainio filed a writ of habeas corpus in the Anaconda-Deer Lodge County Clerk of the District Court's office this week on behalf of Mary and William Kellogg.

The writ names Chief of Law Enforcement Jim Connors and Justice of the Peace Lorraine Biggs as the respondents. According to the writ, the sentences imposed on the Kelloggs for contempt of court exceed the legal limit and thus the writ asks that the remaining time on the sentences be dismissed.

Mary and William Kellogg were each sentenced in Anaconda-Deer Lodge County Justice Court to six months in jail

for criminal contempt for failure to abide by the conditions set by the court in November 1992 in connection with animal cruelty charges. Mary Kellogg was sentenced to serve her sentence five days at a time while William Kellogg was to serve his sentence three days at a time.

Biggs had ruled the Kelloggs to be in contempt of court for non-compliance with the conditions of their sentence. According to the court, the

Kelloggs did not file the veterinary reports they were ordered to file.

In addition, they did not have a planned grazing system and they did not supply a list of the animals in their possession and the names of their owners. Animal Warden John Siders stated that there were 10-98 head of horses on the property at the last count.

The writ alleges that there was never any formal charge made against the petitioners

charging them in writing as required by the Montana Criminal Code(MCA).

The writ also states that the three day and five day sentences per month are in excess of those contained in the section 3-10-404 of the MCA which states, "A justice may punish for contempts by fine or imprisonment or both; such fine not to exceed in any one case, \$100 and such imprisonment, 1 day."

The writ goes on to say that the petitioners have served more than one day in jail which is the maximum sentence allowable for contempt by the Justice of the Peace.

Because of these circumstances, the writ is asking that the remaining jail sentences be dismissed, the court award petitioner's costs and attorney

Holiday

Ranchers claim jail, fines assessed unconstitutional

Two Deer Lodge Valley ranchers sentenced to fines and jail time for contempt when they did not comply with a court order to properly care for their horses are claiming they were unconstitutionally imprisoned.

Mary Kellogg was sentenced to five days in jail every month for six months and \$600 in fines. Her husband, William, was sentenced to three days in jail every month for six months and fined \$360.

Justice of the Peace Lorraine Biggs sentenced them Nov. 12, when she found they had failed to follow a court order to decrease the herd or provide reports of monthly veterinarian reports on the animals' condition.

The case began more than a year ago, when the county animal control officer reported some of the horses on the Kellogg land were starving.

Kevin Vainio, attorney for the Kelloggs, filed a writ of habeas corpus in district court Thursday alleging they have been imprisoned illegally. The action names Biggs and Anaconda-Deer Lodge Chief of Law Enforcement Jim Connors.

The Kelloggs were scheduled to begin serving jail time in December, but that was delayed because of illness, Connors said Thursday.

Vainio's filing says his clients never received any formal charges in writing, and he quotes state statutes that limit contempt sentences from justice court: "Such fine not to exceed in any one case, \$100 and such imprisonment, 1 day."

The Kelloggs have requested a hearing before a district court judge, and asked that the judge relieve them of "the unconstitutional and unlawful restraint on their liberty," and nullify the sentence.

Powell County court

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

Judiciary
DATE Feb 2, 1993

COMMITTEE

BILL NO.

SB 323

SPONSOR(S)

McCarthy

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Edward G. Beaudette 800 S. Main ST ANACONDA MT 59711	Anaconda-Deer Lodge County	✓	
DAVE PAULI 440 N 31st Billings MT 59101	The Humane Society of the United States	✓	
John Sidens 1313 Sannyside ANACONDA, MONTANA 59711	Animal Warden ANA/DeerLodge	✓	
Dave Gullikson 1501 E Park ANACONDA MT	Veterinarian	✓	
Liz Smith	Dist # 48	✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
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MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
53rd LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN RUSSELL FAGG, on February 3, 1993, at
8:00 a.m.

ROLL CALL

Members Present:

Rep. Russ Fagg, Chairman (R)
Rep. Randy Vogel, Vice Chairman (R)
Rep. Dave Brown, Vice Chairman (D)
Rep. Ellen Bergman (R)
Rep. Jody Bird (D)
Rep. Vivian Brooke (D)
Rep. Bob Clark (R)
Rep. Duane Grimes (R)
Rep. Scott McCulloch (D)
Rep. Jim Rice (R)
Rep. Angela Russell (D)
Rep. Tim Sayles (R)
Rep. Liz Smith (R)
Rep. Bill Tash (R)
Rep. Howard Toole (D)
Rep. Tim Whalen (D)
Rep. Karyl Winslow (R)
Rep. Diana Wyatt (D)

Members Excused: None.

Members Absent: None.

Staff Present: John MacMaster, Legislative Council
Beth Miksche, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: HB 307, HB 272
Executive Action: HB 272, HB 307, HB 236, HB 267
HB 258, HB 121, HB 323, SB 29

voting for the amendment were REPS. BROWN, BERGMAN, BROOKE, MCCULLOCH, RUSSELL, TOOLE and WYATT. Those voting against the amendment were CHAIRMAN FAGG, REPS. VOGEL, BIRD, CLARK, GRIMES, RICE, SAYLES, SMITH, TASH, WHALEN and WINSLOW.

REP. TOOLE said cases like this will be thrown out before they even get to court. He believes there are better ways to do this; he'd rather see some sort of limit on the overall liability being paid out.

Motion/Vote: CHAIRMAN FAGG moved Mr. Petesch's amendment for a new section in the applicability clause at the end of the bill, which would say, "This act applies to causes of action occurring on or after October 1, 1993." The amendment passed 15-3 with REPS. TOOLE, RUSSELL and BROWN voting no.

Vote: REP. VOGEL MOVED HB 121 DO PASS AS AMENDED. Motion carried 10-8. Those voting for the bill as amended are CHAIRMAN FAGG, REPS. VOGEL, BERGMAN, CLARK, GRIMES, RICE, SAYLES, SMITH, TASH and WINSLOW. Those voting against the bill as amended are REPS. BIRD, BROOKE, BROWN, MCCULLOCH, RUSSELL, TOOLE, WHALEN and WYATT.

EXECUTIVE ACTION ON HB 323

Motion: REP. BROWN MOVED HB 323 DO PASS.

Discussion:

REP. BROWN stated that the committee should ignore the kind of haphazard amendments proposed and stay with the bill as originally written. It may not give judges any more authority than they generally have, but it focuses their attention to the fact that they have that authority. He believes the rest of the proposed amendments complicate the issue; therefore, he supports the bill the way it is.

REP. RICE distributed a letter from John Conner, Assistant Attorney General, Bureau Chief, County Prosecutor Services Bureau. EXHIBIT 4 REP. RICE said the one positive aspect of the bill is that perhaps it would be helpful to justices of the peace if this specific condition was placed in the statute.

Vote: HB 323 DO PASS. Motion carried unanimously 18-0.

EXECUTIVE ACTION ON SB 29

Motion: REP. BROWN MOVED SB 29 BE CONCURRED IN.

Motion/Vote: REP. WHALEN moved to amend the bill on page 2, line 24: striking the word "counseling" from the original language of "reasonable and medical counseling costs." The amendment carried unanimously 18-0.

HOUSE OF REPRESENTATIVES

Judiciary

COMMITTEE

ROLL CALL

DATE

2-3-93

NAME	PRESENT	ABSENT	EXCUSED
Rep. Russ Fagg, Chairman	✓		
Rep. Randy Vogel, Vice-Chair	✓		
Rep. Dave Brown, Vice-Chair	✓		
Rep. Jodi Bird	✓		
Rep. Ellen Bergman	✓		
Rep. Vivian Brooke	✓		
Rep. Bob Clark	✓		
Rep. Duane Grimes	✓		
Rep. Scott McCulloch	✓		
Rep. Jim Rice	✓		
Rep. Angela Russell	✓		
Rep. Tim Savles	✓		
Rep. Liz Smith	✓		
Rep. Bill Tash	✓		
Rep. Howard Toole	✓		
Rep. Tim Whalen	✓		
Rep. Karyl Winslow	✓		
Rep. Diana Wyatt	✓		

HR:1993

wp.rollcall.man

CS-09

HOUSE OF REPRESENTATIVES

Judiciary

COMMITTEE

ROLL CALL VOTE

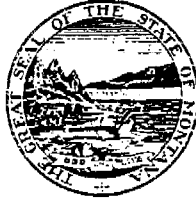
DATE 2-3-93 BILL NO. HB 323 NUMBER 18MOTION: Motion to pass carried unanimously 18-0

NAME	AYE	NO
Rep. Russ Fagg, Chairman	✓	
Rep. Randy Vogel, Vice-Chair	✓	
Rep. Dave Brown, Vice-Chair	✓	
Rep. Jodi Bird	✓	
Rep. Ellen Bergman	✓	
Rep. Vivian Brooke	✓	
Rep. Bob Clark	✓	
Rep. Duane Grimes	✓	
Rep. Scott McCulloch	✓	
Rep. Jim Rice	✓	
Rep. Angela Russell	✓	
Rep. Tim Sayles	✓	
Rep. Liz Smith	✓	
Rep. Bill Tash	✓	
Rep. Howard Toole	✓	
Rep. Tim Whalen	✓	
Rep. Karyl Winslow	✓	
Rep. Diana Wyatt	✓	
	18	0

STATE OF MONTANA
DEPARTMENT OF JUSTICE
COUNTY PROSECUTOR SERVICES BUREAU

EXHIBIT # 4
DATE 2-3-93
SB HB 323

Joseph P. Mazurek
Attorney General



Justice Building
215 North Sanders
PO Box 201401
Helena, MT 59620-1401

February 3, 1993

Hon. Jim Rice
Montana House of Representatives
Capitol Station
Helena MT 59620

Re: House Bill 323

Dear Representative Rice:

As requested, I have reviewed the above-referenced proposal and would offer the following observations.

The substantive amendments simply allows the court, upon second or subsequent conviction to impose restrictions on possession or ownership of animals. Because the offense as presently defined is a misdemeanor, even for second or subsequent offenses, cruelty to animals actions would be prosecuted in justice court. It is not an offense for which the district court has concurrent jurisdiction. Thus, any sentences imposed, including conditions thereof, would be imposed by the justice of the peace.

Montana Code Annotated § 46-18-201, allows the sentencing court, whether district or justice court, to sentence the defendant to jail for any time up to the maximum, to defer imposition of sentence for up to one year for a misdemeanor, or to suspend execution of the sentence up to the maximum time allowed for the offense. In the case of a cruelty to animals conviction, the court could suspend the sentence for up to six months. If the sentence is deferred or suspended, the court is also permitted to impose any reasonable conditions or restrictions upon defendant during the period of suspension or deferment.

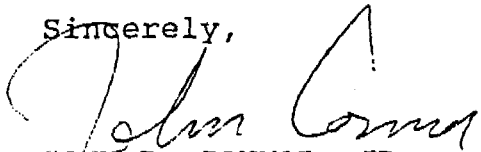
I believe that the provisions of § 46-18-201 mentioned above, allow the court the discretion to impose the restrictions that are the substance of House Bill 323. I once prosecuted a multiple count cruelty to animals case in which the court did, as a condition to consecutive suspended sentences, restrict ownership of animals by the defendant. However, there certainly is no harm articulating such authority in the law and, in fact, it may be helpful in those instances in which the justice of the peace is not comfortable imposing such conditions unless they are specified in the statute.

Hon. Jim Rice
Page 2
February 3, 1993

I do not believe, however, that the court can impose the restrictions of HB 323 for a term longer than that allowed by statute as punishment for the offense. In other words, if the court were to impose a deferred sentence on one count of cruelty to animals, it could only restrict ownership of animals for up to one year. If it were to impose a suspended sentence on one count, it could restrict ownership for up to six months only, or only for such a period of time as the court maintains jurisdiction over the case. As stated in § 46-18-201(1)(b), the court can "suspend execution of [the] sentence up to the maximum sentence allowed for each particular offense." Once that period of time expires, and there has been no revocation, the court loses jurisdiction of the case and has no authority thereafter to enforce conditions.

I hope this information is of some use. Please give me a call if you have any questions.

Sincerely,



JOHN P. CONNOR, JR.
Assistant Attorney General
Bureau Chief
County Prosecutor Services Bureau

HOUSE STANDING COMMITTEE REPORT

February 4, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that House Bill 323 (first reading copy -- white) do pass .

Signed: Russ Fagg
Russ Fagg, Chair

MINUTES

**MONTANA SENATE
53rd LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By Senator Bill Yellowtail, on April 13, 1993, at 10:06 a.m.

ROLL CALL

Members Present:

Sen. Bill Yellowtail, Chair (D)
Sen. Steve Doherty, Vice Chair (D)
Sen. Sue Bartlett (D)
Sen. Chet Blaylock (D)
Sen. Bob Brown (R)
Sen. Eve Franklin (D)
Sen. Lorents Grosfield (R)
Sen. Mike Halligan (D)
Sen. John Harp (R)
Sen. David Rye (R)
Sen. Tom Towe (D)

Members Excused: None.

Members Absent: Sen. Bruce Crippen (R)

Staff Present: Valencia Lane, Legislative Council
Kelsey Chapman, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SJR 31
Executive Action: HB 323, HB 576, SJR 31, HB 570

HEARING ON HJR 31

Opening Statement by Sponsor:

Senator Mike Halligan, Senate District 34, said in the 53rd Session there had been several bills dealing with tort reform and health care in rural Montana. He said any solutions to these problems were complex, and an interim study could be productive. He said that SJR 31 would create a study committee for research on insurance costs, tort reform proposals, and other similar issues. He said the interim study helped address the issues in a comprehensive way.

important to the Committee, he would not oppose an amendment.

Senator Towe said he agreed with Russell Hill and Larry Akey that defensive medicine and legal questions should be specifically addressed in the study.

Senator Halligan said these might be better addressed in the health care portion of the study, rather than the legal portion.

Senator Franklin said defensive medicine was to be examined in the study of SB 285.

Senator Yellowtail asked Senator Halligan if it was worthwhile to add language to insure SJR be dovetailed with SB 285 when the study of defensive medicine was in question. Senator Halligan said it could be assumed the coordination would take place.

Senator Doherty asked if any interim committee had ever subpoenaed anything. He asked if it would be truly helpful to subpoena records. Senator Halligan said in one committee he was on, there had been an attempt to get records of actuaries, but he could not remember if a subpoena was finally issued.

Senator Towe said in 1974, an interim committee started a subpoena process on the coal tax study. He said before the Attorney General ever issued a subpoena, the coal companies came through, and turned over their records.

Closing by Sponsor:

Senator Halligan closed on SJR 31.

EXECUTIVE ACTION ON HB 323

Motion\Vote:

Senator Doherty moved to take HB 323 OFF THE TABLE. The Motion CARRIED UNANIMOUSLY.

Discussion:

Senator Halligan explained amendments (hb032302.av1) would allow an option of injunction in a first offense case. He said the penalty for a second offense was increased to a felony, so the court would have a longer time span for oversight of a second offender. He said the amendments cleaned up HB 323, but left substantive provisions intact.

Motion:

Senator Halligan moved HB 323 BE AMENDED (hb032302.av1).

Discussion:

Senator Towe asked what the penalty would be under the two year felony. He asked if the \$1000 and a term not to exceed two years would be the only punishment. Senator Halligan answered this was correct.

Senator Towe asked if there would need to be suspension of the rules in the House to accept HB 323 back. Senator Halligan answered yes.

Senator Yellowtail asked Valencia Lane if an effective date had been put into the amendments. Ms. Lane said no, that there had been discussion about putting an immediate effective date on HB 323, but that had not been done. She also said that there had been discussion about an applicability date. An applicability date might not be possible because it could be retroactive.

Senator Yellowtail asked if Senator Halligan had considered putting in an effective date and an applicability date. Senator Halligan said there perhaps could not be a retroactive applicability date because of constitutional provisions.

Valencia Lane said in other cases there had been retroactive applicability dates applied, and she deferred the question to John Connor.

John Connor, the Attorney General's office, said he did not think HB 323 could be made retroactive so as to bring in a previous charge a person was convicted of. He said an immediate effective date could be useful in dealing with current problems.

Senator Halligan said he would accept as a friendly amendment to his amendment adding an immediate effective date.

Vote:

The Motion by Senator Halligan that HB 323 BE AMENDED (hb032302.avl) CARRIED UNANIMOUSLY.

Motion\Vote:

Senator Doherty moved HB 323 BE CONCURRED IN AS AMENDED. The Motion CARRIED UNANIMOUSLY. Senator Halligan was assigned to carry HB 323 on the Floor of the Senate.

EXECUTIVE ACTION ON HB 576**Discussion:**

Senator Yellowtail said some people had approached him about

ROLL CALL

SENATE COMMITTEE

Judiciary

DATE 4/13/93

NAME	PRESENT	ABSENT	EXCUSED
Senator Yellowtail	X		
Senator Doherty	X		
Senator Brown	X		
Senator Crippen		X	
Senator Grosfield	X		
Senator Halligan	X		
Senator Harp	X		
Senator Towe	X		
Senator Bartlett	X		
Senator Blaylock	X		
FRANK Senator Blaylock	X		
Senator Rye	X		

FC8

Attach to each day's minutes

COMMITTEE--SENATE JUDICIARY

Page 3

- BILL NO - REFERRED - HEARING - OTHER CONSIDERATION DATES - EXECUTIVE ACTION/DATE/VOTE - REREFERRED - DATE READ

HB0245	KADAS, MIKE	2/23	3/19	ESTABLISH GROUNDS FOR TERMINATION OF MOBILE HOME TENANCY	CONCUR AS AMENDED 3-26	3/27
HB0255	ANDERSON, SHIELL	2/16	3/04	REVISE RELEASE OR DISCHARGE OF DEFENDANT WHO PLED MENTAL DISEASE OR DEFECT	CONCUR AS AMENDED 3-8	3/08
HB0258	TOOLE, HOWARD	2/12	3/15	DEDUCTION FROM INTERIM EARNINGS DEDUCTION FROM WRONGFUL DISCHARGE AWARD	CONCUR AS AMENDED 3-17	3/18
HB0272	RICE, JIM	2/12	3/17	DEPT. BILL WITH TECHNICAL GAMBLING LAW CHANGES	CONCUR AS AMENDED 3-17	3/18
HB0278	BARDANOUVE, FRANCIS	3/10	3/22	REVISE DISTRICT COURT CRIMINAL EXPENSE REIMBURSEMENT	CONCUR 3-26	3/27
HB0307	DEBRUYCKER, ROGER	2/12	3/17	ALLOW DEPT. JUSTICE TO ADOPT NEW AMUSEMENT GAMES BY RULE	CONCUR AS AMENDED 3-17	3/18
HB0323	MCCARTHY, BEA	2/12	3/05	INJUNCTION AGAINST ONE CONVICTED OF CRUELTY TO ANIMALS	CONCUR AS AMENDED 4-13	4/13
HB0335	TOOLE, HOWARD	3/01	3/18	GENERALLY REVISE CHILD SUPPORT ENFORCEMENT LAWS	TABLED ON 03/29	
HB0340	BROWN, DAVE	2/16	3/03	INCLUDE PURCHASE OR ATTEMPT TO PURCHASE ALCOHOL UNDER POSSESSION STATUTE	CONCUR 3-3	3/04
HB0346	BENEDICT, STEVE	3/01	3/24	MEDICAL MALPRACTICE TORT REFORM	CONCUR AS AMENDED 3-26	3/30
HB0357	FAGG, RUSSELL	2/20	3/23	EXPAND CATEGORY OF PERSONS PROTECTED BY AIRCRAFT LIEN	CONCUR 3-23	3/27
HB0396	WHALEN, TIM	2/20	3/19	REFUSAL OF DRIVER TO TAKE ALCOHOL TEST CAN'T AFFECT INSURANCE	TABLED ON 03/26	

MINUTES

**MONTANA SENATE
53rd LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By Senator Bill Yellowtail, on March 5, 1993, at 10:08 a.m.

ROLL CALL

Members Present:

Sen. Bill Yellowtail, Chair (D)
Sen. Steve Doherty, Vice Chair (D)
Sen. Sue Bartlett (D)
Sen. Chet Blaylock (D)
Sen. Bob Brown (R)
Sen. Eve Franklin (D)
Sen. Lorents Grosfield (R)
Sen. Mike Halligan (D)
Sen. John Harp (R)
Sen. David Rye (R)
Sen. Tom Towe (D)

Members Excused: Sen. Crippen

Members Absent: NONE

Staff Present: Valencia Lane, Legislative Council
Rebecca Court, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: HB 582
HB 429
HB 121
HB 323
Executive Action: NONE

HEARING ON HB 582

Opening Statement by Sponsor:

Representative Brown, District 72, said HB 582 was requested to address concerns of sheriffs, peace officers, and gun owners regarding permits of concealed weapons. HB 582 would require a sheriff to give a written statement to the applicant if the permit is denied. Rep. Brown said the appeal process would allow a court to determine facts, as well as law, which is not bound by factual, legal, or other determinations of the sheriff. Rep.

HEARING ON HB 323Opening Statement by Sponsor:

Representative McCarthy, District 66, said HB 323 is an act which allows the court, upon a second or subsequent conviction of cruelty to animals, to limit a defendant's further ownership, possession, or custody of animals, if the court believes it is appropriate. Rep. McCarthy submitted a packet of newspaper articles dealing with a case of severe animal cruelty in the State of Montana. (Exhibit #1)

Proponents' Testimony:

Edward Beaudett, County Attorney in Anaconda-Deer Lodge County, told the Committee that HB 323 was requested to address a specific problem that has occurred and is continuing to occur in Anaconda-Deer Lodge County and Powell County. Mr. Beaudett said current law is inadequate in that there is no way to prevent a person from continuing to own animals if they are engaged in cruelty to animals. The situation in Anaconda-Deer Lodge is a case where Mary Kellogg and her husband had more than 300 horses, an untold number of dogs, cats, goats, and rabbits on a piece of property that was not able to sustain them. The case has been going on for more than a year and a half. Mr. Beaudett told the Committee that the Kelloggs have been fined and placed in jail, but still continue to own animals. The animal control officer for Anaconda-Deer Lodge County indicated that there were at least 85 horses and a lot of other animals still on the property today. Mr. Beaudett said this is a problem that is recognized throughout the United States. There are many people who sacrifice their own well being to try to take care of animals, which is a form of cruelty and a form of mental illness. Mr. Beaudett said although it is not a diagnosable form of illness, it is a problem that is recognized. Mr. Beaudett told the Committee that 31 states have statutory provisions similar to the HB 323. Those statutes allow judges to prevent a person from continuing to own animals if there is evidence of cruelty to animals.

Dr. Mark Ransford, Flint County Valley Veterinary Clinic, said he assisted in the investigation of the Kellogg ranch. Dr. Ransford said he was appalled when he visited the ranch and is still appalled whenever he returns. Dr. Ransford said Ms. Kellogg had 300 or more horses on a ranch designed to carry 100 horses. Ms. Kellogg had made no provisions to provide the horses with feed in the winter until she was forced to by the county. Dr. Ransford told the Committee that a horse he examined died from starvation, which was only one of many. Dr. Ransford said Ms. Kellogg does not feel there is a problem and every time he visits the ranch there are more animals. Dr. Ransford said the problem with the current law is that there is no remedy to deal with someone who is mentally unbalanced, and the county cannot afford to feed animals for an extended period of time. Dr. Ransford urged support for HB 323 to give the courts a remedy for this problem.

Dr. Ransford told the Committee that his clients are in agreement with HB 323.

Mike Grayson, an Attorney from Anaconda, said he is in favor of HB 323 for a number of reasons. The law as it is on the books today does not give prosecutors the power to look prospectively at what is going on in certain situations. Mr. Grayson said there were 300 horses at the Kellogg Ranch and upon receiving numerous complaints about the ranch, a search warrant was granted. Pictures were taken of the animals that were in poor or unsatisfactory condition. Of the animals that were examined 30 to 35 horses were found to be in poor or unsatisfactory condition, therefore the Kelloggs were charged with cruelty to animals. There was nothing that could be done with the remaining animals, although a number of them were documented to be in fair condition and were deteriorating going into the winter. The county attorneys office filed a charge of cruelty in December of 1991. The Kelloggs plead guilty, therefore the judge put a number of conditions on the sentence, which included a maximum fine of \$500 and a list of orders to be carried out at the ranch. The order included monthly inspections to be performed by veterinarians, which were to be followed. The Kelloggs refused to comply with the orders. By February of 1992, eight or nine horses had died, therefore a second charge of cruelty was filed and the Kelloggs plead guilty. Mr. Grayson told the Committee that the court was limited in what they could do, even though it was the second offense. Mr. Grayson said that even though some horses were in good condition, the current law does not allow a county to seize control of an animal that has not been documented as being abused. HB 323 would give the court the power, upon a second or subsequent conviction of cruelty, to enjoin or limit a persons further ownership or possession of an animal. Mr. Grayson said HB 323 is necessary to help deal with the problem of cruelty to animals.

John Siders told the Committee that he is an animal control officer for Deer Lodge County and was the investigating officer in the Kellogg case. Mr. Siders said HB 323 would give him a tool to do his job.

Dave Guhlke stated that he is a veterinarian in Anaconda, MT. Dr. Guhlke said in 99% of all cases of cruelty, the animals are given new homes or put to sleep if they are in very poor condition. Dr. Guhlke said Mrs. Kellogg does not realize she is neglecting her animals, which is why the legal system needs a remedy to take those the animals away before they suffer.

Senator Beck, District 24, told the Committee that the Kellogg ranch is near his own personal property. Senator Beck said the Kellogg situation is a serious problem. Senator Beck told the Committee that the dogs on the ranch bark all night because they are hungry and the horses stagger around the fields in hunger. Senator Beck asked for serious consideration in HB 323.

Opponents' Testimony:
NONE

Questions From Committee Members and Responses:

Senator Grosfield asked Mr. Grayson if Mrs. Kellogg was charged with 35 counts of cruelty. Mr. Grayson said Mrs. Kellogg was charged with only one count of cruelty.

Senator Grosfield asked Mr. Grayson if Mrs. Kellogg could be charged a second time with regard to the same animals. Mr. Grayson said the second charge was filed after a number of horses had been found dead.

Senator Grosfield asked Mr. Grayson about the sale of the animals. Mr. Grayson said giving the judge the discretion to enjoin a persons ownership of an animal, the judge could order the person to sell the animals, If they did not comply, the judge could order a sale and return the proceeds back to the owner of the animals after the cost of the sale is met.

Senator Grosfield asked Mr. Grayson about the effective date. Mr. Grayson said the intention of HB 323 was to be effective upon passage.

Senator Doherty asked Mr. Grayson about making major abuse a felony. Mr. Grayson said after a second conviction of cruelty the crime would become a high misdemeanor. Mr. Grayson said it would not be in the best interest of the animals to send the owner to jail because no one would be able to take care of the animals. Mr. Grayson told the Committee that the proper remedy would not be jail time.

Senator Doherty asked Mr. Grayson about increasing the fine for cruelty to animals. Mr. Grayson said part of the problem with the people who are neglecting animals is financial. The money is better applied to feed the animals.

Senator Doherty asked Mr. Grayson about giving courts the discretion to order counseling. Mr. Grayson said that is already present in the law under the General Sentencing Statute.

Senator Halligan asked Mr. Grayson about the possibility of removing the animals after the first offense. Mr. Grayson said after the first offense, the hope is that the person would not repeat their wrong doings. Mr. Grayson said if there is more than one animal, a second conviction could be given at the same time as the first, therefore allowing the animals to be removed.

Senator Halligan asked Mr. Grayson if there would be constitutional problems with forfeiting property. Mr. Grayson said there would not be constitutional problems because the person would receive the proceeds from the sale of the animals. Senator Halligan said the issue of forfeiture should be looked

into.

Senator Towe asked Mr. Beaudett about the constitutionality problem about taking peoples property. Mr. Beaudett does not feel there would be a constitutional problem because due process is available. The animals would only be taken after a second offense and after the defendants had been given an opportunity to make amends.

Senator Towe asked Mr. Beaudett if a person would have all their animals taken away if he violated rules on horse racing. Mr. Beaudett said the judges would have discretion in determining whether a person would be able to continue to own race horses. Mr. Beaudett said a person would be able to own other types of animals if there was no indication of cruelty.

Senator Towe asked Mr. Beaudett if he would object to adding the word "similar animals" instead of "any animals" on page 2, line 5. Mr. Beaudett said yes because if the wording was changed, in the Kellogg situation, numerous cases would have to have be brought against all the different types of animals.

Senator Towe asked Mr. Beaudett about language dealing with taking away specific animals. Mr. Beaudett said the judge has the discretion to review all the evidence and make an appropriate order, whether it be specific to a particular animal, or to every type of animal.

Closing by Sponsor:

Rep. McCarthy urged the Committee to pass the effective date amendment which would make it effective on passage. Rep. McCarthy said that would give the state a tool to deal with the Kellogg problem immediately.

HEARING ON HB 429

Opening Statement by Sponsor:

Representative Strizich, District 41, told the Committee that HB 429 was brought to his attention by law enforcement personal. Currently there is no statute specifying an offense relating to the manufacturing or cultivation of dangerous drugs. Rep. Strizich told the Committee that when law enforcement agencies discover a methamphetamine lab or a marijuana growing operation they have to weigh the amount of substance available at the site. The plants are uprooted and dried, then the prosecution decided if there is enough probable cause to proceed for a higher level of prosecution. Rep. Strizich gave an example. If a marijuana grower has 100 marijuana plants and their dry weight is less than 60 grams, the offense may constitute a misdemeanor even though there were 100 plants. Rep. Strizich said HB 429 with amendments would send a clear and defined message to drug manufacturers that they are not welcome in Montana and if caught manufacturing drugs

ROLL CALL

SENATE COMMITTEE Judiciary

DATE 3-5-93

NAME	PRESENT	ABSENT	EXCUSED
Senator Yellowtail	X		
Senator Doherty	X		
Senator Brown	X		
Senator Crippen			X
Senator Grosfield	X		
Senator Halligan	X		
Senator Harp	X		
Senator Towe	X		
Senator Bartlett	X		
Senator Franklin	X		
Senator Blaylock	X		
Senator Rye	X		

FC8

Attach to each day's minutes

Animal cruelty charges filed

Attorney W.G. Gilbert III
of Dillon, representing a Ga-

len-area woman, appeared in Anaconda-Deer Lodge County Justice Court Thursday where his client was charged with animal cruelty.

Mary Kellogg, 1180 Yellowstone Trail, is charged with cruelty to animals, not having rabies vaccinations for her dogs and not having a kennel license.

Kellogg is scheduled to appear before Justice of the Peace Lorraine Biggs Oct. 17 to answer the charges, which originated with the recent discovery that hundreds of horses may be starving to death.

The allegations were made by investigating law enforcement officers after neighbors complained that there was not enough forage or other feed available for her animals. According to court documents, nearly 370 horses are on the property.

The rabies and kennel license charges were brought because there are at least 40 dogs on her property and they are allegedly not properly vaccinated.

Meanwhile, the county switchboard has been swamped with calls from citizens offering help and emergency food supplies, according to operator Bobbie Austin.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 1

DATE 3-5-93

BILL NO. HB 323

Anaconda / Area

Horse owner charged with cruelty

Mary Kellogg to plead Oct. 17, authorities negotiate to feed animals

Duncan Adams
Standard Staff Writer

A Galen-area woman sent her attorney Thursday to Anaconda-Deer Lodge County Justice Court on her behalf to hear a charge of cruelty to animals stemming from concern about hundreds of horses on her ranch.

Attorney W.G. Gilbert of Dillon appeared before Justice Lorraine Kellogg on behalf of Mary Kellogg, who owns a ranch at 1180 Yellowstone Trail. Kellogg was charged with cruelty to animals, a misdemeanor, and with failing to have rabies vaccines and a kennel license for 44 dogs on her property.

She was scheduled to enter a plea

to the charges Oct. 17.

According to County Attorney Sherry Petrovich-Staedler, in addition to having more than 300 horses, Kellogg owns approximately 77 dogs.

"That's her count," said Petrovich-Staedler.

The criminal complaint accompanying the cruelty to animals charges alleges that Kellogg "without justification, knowingly or negligently subjected approximately 368 horses to mistreatment and neglect by failing to provide (them) with proper food, drink and shelter ..."

Petrovich-Staedler would not release the report of veterinarian Mark Ransford, who visited the ranch Wednesday with police.

But her description of Ransford's

She does have some horses that are in very good condition But she's got a big group of them that don't look so good

write-up of that visit indicated conditions at the ranch might not be as bad as first believed.

"She does have some horses that are in very good condition. But she's got a big group of them that don't look so good," said Petrovich-Staedler.

She added that authorities who served a search warrant on Kellogg Wednesday believe they may have missed some of the animals in the roughest shape. A videotape in police possession shows horses that police did not see Wednesday, she said.

"The vet's report is based on the horses they saw yesterday. The vet does say that those horses are lacking in feed, but they're not to the point of starvation," said Petrovich-Staedler.

Meanwhile, authorities are negotiating with Kellogg and her attorney to allow the city-county to begin feeding the horses. And Kellogg reportedly has been forbidden to sell any of the animals until legal questions and charges are resolved.

According to a police report, Kellogg has received at least one harassing telephone call since the investigation regarding her horses became public. That report, made by Kellogg, described a phone call from an unidentified female who said, "You're disgusting. I'll go you."

Court orders Galen rancher to obtain mental evaluation

Evaluation might look at 'animal addiction'

By Duncan Adams
Standard Staff Writer

They say a dog is man's best friend. Perhaps Roland said it more succinctly: "The more I see of men, the better I like dogs."

Truth is, both everyday experience and scientific research suggest that animals do soothe a human's everyday cares.

Many researchers also claim that a small and daily glass of wine can offer a fine if fleeting solace.



GRAYSON

But just like there are those whose quest for relaxation takes them past a glass of wine to a bottle or two, there are those whose affinity

for animals occasionally gets out of control.

To date, no one has officially argued that rancher Mary Kellogg of Galen, convicted of cruelty to animals and recently sentenced to serve four days in jail, suffers from what some researchers call "animal addiction."

But prosecutors in Anaconda-Deer Lodge County, and Justice of the Peace Lorraine Biggs, have recommended that Kellogg seek an evaluation of her mental health.

A range analysis expert has concluded that Kellogg's ranch provides pasture enough to support only 44 mature horses year-round without supplemental feeding. Yet, according to court records, Kellogg has had more than 270 horses on her ranch in recent months.



A horse found last fall on Mary Kellogg's ranch

At one point, records show, she also had dozens of dogs.

During a court hearing Thursday, Justice Biggs ordered Kellogg to reduce her herd of horses to 100 head by July 7.

Dr. Karen Kemper, a veterinarian for the city of Houston's Animal Control Bureau, has made a study of the phenomenon of "animal addiction."

According to a July 1991 article by Evan Moore in the "Houston Chronicle," Kemper believes behaviors associated with animal addictions share characteristics with traits identified in connection with substance abuse.

According to Moore's article, those "10 parallels of behavior" are:

- A preoccupation with the addiction.
- Repetition or cycling of the addictive behavior.
- Alibis for behavior.
- Neglect of personal, physical and environmental conditions.

- Claims of persecution.
- Presence of enablers, people who help continue the addiction.
- Denial that the addiction exists.
- Isolation from the rest of society except those who also deal in the addiction, such as enablers.
- Abuse of animals through neglect.
- Have been committed at least once and found sane.

Kellogg was charged in October with cruelty to animals for her alleged neglect of scores of horses on her ranch. In December, she received a deferred sentence, with conditions for that charge.

Recently, however, Kellogg, 44, and her husband, William, 52, were in court on a new charge of cruelty to animals. Both entered an Alford plea of guilt to those charges Thursday, and sentencing was set for July 7.

Justice Biggs also revoked Mary Kellogg's earlier deferred sentence, citing failure to comply with court conditions defining recommendations for proper care of the animals on her ranch.

Biggs sentenced Kellogg to six months, with all but four days in jail suspended, and ordered her to reduce the size of her herd of horses.

And she reiterated the court's directive for Kellogg to participate in a mental health evaluation.

There was talk during Thursday's hearing of a "referral question" for a mental health professional to consider during his or her evaluation of Kellogg.

On Friday, Deputy County Attorney Michael Grayson was asked whether that referral question, from his perspective, might ask an evaluator to consider the possibility of animal addiction.

"I think that's what we have in mind as a referral question," Grayson replied. "That's certainly what I was looking at, and I think that's what the court was looking at, too."

ADAM says prison endangering w

EXHIBIT

DATE 3-5-93

HB 323

Horses get food, probe continues

By Duncan Adams
Standard Staff Writer

The animal control warden for Anaconda-Deer Lodge County began feeding horses Friday at a ranch near Galen where authorities believe many of the horses have been starving.

"I went down and fed the horses Friday and Saturday," said animal control warden John Siders on Monday.

Siders said the "horses almost tore my truck apart," trying to get at the hay he was delivering.

Around 4 p.m. Friday, Siders called in to report to police that he had found a horse dead on the ranch, owned by Mary Kellogg, at 1180 Yellowstone Trail.

On Monday, Siders said an autopsy is being performed on the horse, which may have died from causes unrelated to malnutrition.

The horse, said Siders, "appeared to have some meat on it," unlike many of Kellogg's 300-plus horses. Authorities have said they fear some of these animals do not have the necessary reserves to live through a Montana winter.

Kellogg was charged in Anaconda-Deer Lodge County Justice Court Thursday with cruelty to animals. Records show she is accused of "failing to provide (the horses) with proper food, drink and shelter."

She is scheduled to enter a
Please see FOOD Page 3

Food . . .

(Continued from Page 1)

plea to that charge, a misdemeanor, on Oct. 17.

Police Chief Jim Connors said Monday that officials have not yet worked out the legal issues and logistics involved in the city-county's role in providing for the horse. For example, Connors said, the city-county has not identified an appropriate place for storing hay or other feed donated by area residents.

For that reason, Siders said, "I was told to hold off just a little bit longer" before actively soliciting additional donations of feed for the horses.



Oct 9 - 1991
**Starving
horses
focus of
inquiry**

WED OCTOBER 9, 1991

By Duncan Adams
Standard Staff Writer

What may be the largest cruelty to animals case currently under investigation in the United States is gradually coming to light in Anaconda-Deer Lodge County.

The city-county's animal control warden is desperately seeking feed and other assistance for more than 300 head of horses believed to be starving at a ranch in the Deer Lodge Valley.

Meanwhile, police chief Jim Connors says authorities are investigating the horses' dire circumstances. He said the ranch owner, Mary Kellogg of Yellowstone Lane, was charged Oct. 3 in justice court with cruelty to animals, a misdemeanor.

"The statement has been made that the horses' hipbones are sticking out so bad that you could hang a hat on them," Connors said.

During an interview Tuesday, animal control warden John Siders said charges of cruelty to animals can be difficult sometimes to prove in court. But for Siders, the evidence seems clear enough. He said he has knowledge of horses at the ranch eating their own dung for lack of other food.

Siders said he has solicited and received real or promised aid from several humane societies in other Montana cities and towns and from a national humane society. And, he said, a local man has agreed to donate a haystack. But, he said, additional feed will be required to keep the animals alive through the winter.

Connors reported that approximately 250 horses are being kept in Anaconda-Deer Lodge County, with an additional 67 head across the line in Powell County.

The chief said Siders has been tracking the case since he took the animal control job last May.

Connors said Kellogg has refused to part with the horses, even to prospective buyers, and, he said, "there's absolutely no pasture" at the Kellogg ranch.

"I don't know what's going to happen to them," he said.

"She swears she's feeding them. But you don't have to know much about horses to see that they're starving."

Oct 10 - 1991
**Officer: Horses
in poor shape**

Police veterinarian say
animals lack hay for winter

By Duncan Adams
Standard Staff Writer

Two police officers, an animal control warden, and a veterinarian served a search warrant Wednesday afternoon at a ranch near Calen, where authorities fear hundreds of horses are starving.

Anaconda-Deer Lodge County Police Capt. Michael Softich, Lt. Jack Eklund, animal control warden John Siders and Philipsburg veterinarian Dr. Mark Ransford reportedly were met at the ranch by its owner, Mary Kellogg, and her attorney.

Siders said later at his tour of the ranch confirmed fears about the condition of many of the horses there.

"I feel they're in very poor shape," said Siders.

Siders and Police Chief Jim Connors seemed to speak more cautiously Wednesday about conditions at the ranch, noting the potential complexity of legal issues associated with charging Kellogg with cruelty to animals.

Connors clarified Wednesday that Kellogg had not yet appeared in justice court. He had said she'd made an initial appearance on Oct. 3. But he was scheduled to appear Thursday on a misdemeanor charge citing cruelty to animals, he said.

Siders was tight-lipped, too, when asked to describe the findings of Ransford.

"He's writing up his report," Siders said. "He said that the pas-

ture is overgrazed and that the horses have no reserves to go into the winter.

"She needs to get some hay out there," Siders added.

Kellogg would not talk to a reporter who stopped at her ranch-house on Yellowstone Trail Wednesday. A woman at the house said Kellogg was not feeling well.

But a member of a ranching family in the Deer Lodge Valley was willing to share her feelings about the Kellogg controversy on the condition she not be identified.

"I'm so glad something finally is being done," she said, adding that many area ranchers have been concerned about the horses at the Kellogg spread.

"I'm upset with these people because they keep breeding these horses year after year. I don't know why they don't sell a few so they can feed the ones they have," she said.

Gesturing toward some thin and apparently lethargic horses grazing in a parched field nearby, the woman pointed out one horse's protruding hip bones.

"These are yearlings from last year, and they're just starving to death," she said.

Siders said Wednesday that officials have estimated it will require approximately three tons of hay per day to keep all the horses, most of them Arabians, alive.

"That's bare minimum," Siders said. "My horse gets at least 30 pounds of hay per day, plus a quart

Please see HORSE Page 8

SEE NEXT
PAGE

EXHIBIT 1
DATE 3-5-93
HB 323

Horse investigation . . .

(Continued from Page 1)

of oats."

Siders said officials do not yet have an accurate count of the total number of horses owned by Kellogg. However, he said authorities believe there are more than 300 horses at the ranch.

"It's not definitely clear how many there are. It would be almost impossible to get a completely accurate account," Siders said, adding that he walked more than five miles Wednesday searching pastures on the ranch and tallying horses.

He was asked to describe Kellogg's reaction to the appearance of police Wednesday afternoon.

"She was cooperative. Of course, when you have a search warrant served on you, most people are (cooperative)," he said.

Siders said he had received at least six calls Wednesday from peo-

ple offering some kind of assistance for the horses. But neither he nor Connors has an idea yet how the problems at the ranch will be resolved.

The National Humane Society is keeping tabs on the case, Siders said. And Powell County authorities are assisting the investigation, he said, since some of Kellogg's horses

are pastured in that county.

The woman, who said area ranchers have been watching the Kellogg spread said she had "been trying to keep track of all the horses" there.

"There was the prettiest little black colt I used to see. I haven't seen it recently. I hate to think what might have happened," she said.

Subject of charges

OCT 21
1991



Staff photo by Walter Hines

THIS HORSE, intermingled with healthier looking companions, was photographed Thursday on Mary Kellogg's ranch on Yellowstone Trail near Galen. Kellogg was charged Thursday in Anaconda Justice Court with cruelty to animals. A story is on Page 5.

New cruelty counts filed

Prosecutor claims Galen couple let animals die

By Duncan Adams
Standard Staff Writer

This time the charges do not specify the animals are starving. This time the charges say 10 of the horses, "mostly colts," two dogs, two calves, and a goat are dead.

A Galen-area rancher, Mary A. Kellogg, 44, Yellowstone Trail, pleaded innocent Friday afternoon in Anaconda-Deer Lodge County Justice Court to cruelty to animals, second offense.

Her husband, William Kellogg, 52, pleaded innocent to cruelty to animals, first offense.

Deputy County Attorney Michael Grayson would not comment specifically about the new charge filed against Mary Kellogg, who received a deferred sentence in December for a previous charge of cruelty to animals.

But a motion Grayson filed last week to revoke Mary Kellogg's deferred sentence offered specific allegations accompanying the latest

proved check of the defendant's property," Grayson's motion alleges.

"Siders states that all of the animals are believed to have died since the court's judgment (in December)," the motion adds, a judgment that directed Kellogg to comply with official recommendations for the care and feeding of her horses.

Grayson's motion included other grounds for his petition to revoke Mary Kellogg's deferred sentence:

- That she allegedly failed to comply with a court order to submit evidence by Feb. 11 to Justice of the Peace Lorraine Biggs that Kellogg had participated in an evaluation of her mental health.

- That Kellogg has not been feeding her horses enough hay based on recommendations for supplemental feeding resulting from a range analysis of her property by MSU professor John R. Lacey.

According to court records, Lacey reportedly determined that Kellogg's ranch could support only

New animal cruelty charges . . .

(Continued from Page 1)
for supplemental feeding of Kellogg's horses suggest she should be supplying more than two tons of hay per day to properly feed her herd. But, Grayson's motion charges, "Siders has documented that the defendant is only feeding about one-half ton of hay per day total."

A hearing to consider Grayson's motion has been scheduled tentatively for next Thursday in justice court.

The Kelloggs were represented during the court appearance Friday by attorney Kevin Vainio of Butte. After his clients' appearance, Vainio was asked by a reporter to respond to the charges filed against

Siders states that all of the animals are believed to have died since the court's judgment (in December)

the Kelloggs.

"Just that we deny the charges and the accusations," Vainio said.

He added that he believed earlier accounts last fall in *The Montana Standard* of the situation at the Kellogg ranch were unfair and not an accurate portrayal of conditions there.

Asked whether she had a statement about the latest charge filed

against her, Mary Kellogg replied, "Not at this time."

A police citation accompanying the cruelty to animals charges against the Kelloggs alleges that they "negligently subjected 10 horses to mistreatment and neglect by failing to provide proper food, drink, shelter, and proper licensed (veterinary) care to seriously-ill animals."

EX-107
DATE 3-5-93
HB 323

Justice Court

Couple sentenced for contempt

Mary and William Kellogg were each sentenced in Anticongda-Deer Lodge County Justice Court to six months in jail for criminal contempt for failure to abide by the conditions set by the court Thursday.

Mary Kellogg will serve her sentence five days at a time while William Kellogg will serve his sentence three days at a time. They will also be responsible for paying their own jail fees.

According to Judge Lorraine Biggs, the Kelloggs did not comply with the conditions of their sentence because they did not file the veterinary reports they were ordered to file. In addition, they did not have a planned grazing system and they did not supply a list of the animals in their possession and the names of their owners. Animal Warden John Siders stated that there were 90-98 head of horses on the property at the last count.

The Kelloggs last appeared in justice court with their attorney, Kevin Vainio, on Oct. 28 for a revocation hearing concerning a sentence given to the Kelloggs in December 1991 after the Kelloggs entered an Alford plea of guilty to charges of cruelty to animals.

At that time Biggs ordered a state financed veterinary inspection of the herd of horses under the Kelloggs' care before she made a ruling on the revocation.

During the October revocation hearing Deputy County Attorney Michael Grayson and Siders attempted to prove that the Kelloggs had not complied with the terms of their sentences by showing that as of 12:05 p.m. that day the Kelloggs still had over 100 head of horses on their property and they did not file the requested monthly written reports on the status of the animals' health.

Vainio and the Kelloggs stated that they have tried to comply with the order and by the end of Oct. 28 or at the latest, by the end of Oct. 29 the herd on their ranch would be down to 100 head. They had been moving horses when Siders was on their property counting horses at noon the day of the hearing.

The sentence originally given to the Kelloggs was a one year deferred imposition with conditions and fines of \$500 with a \$15 surcharge. The conditions of Kellogg's sentence were devised by Biggs and Grayson.

The conditions were as follows:

- Veterinarian Phil Murphy of Deer Lodge would conduct monthly inspections of the Kellogg ranch and the Kelloggs were to comply with any recommendations Murphy had for the feeding or care of the horses.

- In addition to the veterinary visits, range management specialists would also visit Kellogg's ranch to determine the appropriate number of horses the ranch can support.

- The 35 horses that appeared to be in bad shape must be brought into decent shape or sold by Kellogg.

- Kellogg will be required to seek and complete a mental

health evaluation within 60 days and a report must be filed with the court.

The veterinary visits to the ranch were to be paid for by Kellogg. Grayson explained that Dr. Murphy had discontinued services for the Kelloggs because they allegedly would not pay their veterinary expenses.

According to Grayson the herd was supposed to be reduced by July 1, 1992, but due to a series of troubles that befell the Kelloggs extensions were granted. Wednesday was the final extension date for the herd reduction.

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DATE 3-5-03
H0 323

The Montana Standard, Butte, Wednesday, December 4, 1991

Anaconda / Area

Trial set in horse neglect case

By Duncan Adams
Standard Staff Writer

A Galen-area woman is scheduled to go to trial this month on charges she has neglected and mistreated scores of horses on her ranch.

Mary Kellogg, who owns a ranch at 1180 Yellowstone Trail in the Deer Lodge Valley, is scheduled to appear Dec. 19 in Anaconda-Deer Lodge County Justice Court for a bench trial on a misdemeanor charge of cruelty to animals.

On Oct. 18 in Justice Court, Kel-

logg pleaded innocent to that charge and accompanying allegations she had failed to provide rabies vaccinations for 44 dogs and did not have a kennel license.

On Tuesday, Deputy County Attorney Michael Grayson acknowledged that the local animal control warden, John Siders, has been making regular visits to the Kellogg ranch. Kellogg's attorney reportedly agreed to those visits after charges were filed against her.

In early October, the county attorney's office charged that Kellogg allegedly, "without justification,

knowingly or negligently subjected approximately 368 horses to mistreatment and neglect by failing to provide (them) with proper food, drink and shelter..."

When the news first broke of the ongoing investigation of the condition of horses at the ranch, Police Chief Jim Connors said a number of the animals were in poor condition.

"The statement has been made that the horses' hipbones are sticking out so bad that you could hang a hat on them," Connors said at the time.

Subsequent visits to the ranch by

a veterinarian have determined that some of Kellogg's horses are in good condition, while others "don't look so good," according to County Attorney Sherry Petrovich-Staedler.

Since the charges were filed, Siders has provided supplemental feed to the horses on occasion. After one such visit in early October, Siders said horses on the ranch "almost tore my truck apart" trying to get at feed he was delivering.

Grayson would not comment Tuesday about details of the county's case against Kellogg. He did say state law provides for a \$500

fine and/or six months in the county jail as a maximum penalty for first offense of cruelty to animals.

In addition, an animal owner convicted of cruelty to animals "be required to forfeit to the county in which he is convicted any animal affected," Grayson said, read from state statutes.

Under the law, any forfeiture of animals would be limited to those shown to have been mistreated, said. Asked whether such a determination would be made by a veterinarian, Grayson replied, "that would be logical."

Unjust treatment of animals

I was shocked and appalled to read in The Montana Standard of horses, goats, dogs being starved to death in Anaconda-Deer Lodge County once again. Why weren't these animals taken away

from this party? Why didn't the animal warden check these animals out? Maybe these animals would still be around today.

There must be something done to stop this cruel and unjust treatment of these animals. How many more animals must suffer before something is done right?

I truly hope the Anaconda-Deer Lodge officials do something different and that justice is served.

I hope justice is served for the many animals who really suffered a needless, senseless death. — LEE ROY DEJOHN, 2523 George

Anaconda / Area

Deferred sentence revoked

Mary Kellogg must serve 4 days in jail for violating terms

By Duncan Adams
Standard Staff Writer

An Anaconda justice of the peace decided Thursday to revoke a deferred sentence of a Galen-area woman for violations of court conditions accompanying a cruelty-to-animals conviction in December.

Justice Lorraine Biggs sentenced rancher Mary A. Kellogg, 44, of Yellowstone Trail to six months with all but four days in jail suspended for failure to comply with conditions of her deferred sentence.

Kellogg and her husband, William Kellogg, 52, also entered Alford pleas of guilty to more recent charges of cruelty to animals. Accepting a recommendation by Deputy County Attorney Michael Grayson, Biggs set sentencing for those charges for July 7, allowing the Kelloggs time to reduce their herd of some 300 horses to 100 head.

Biggs warned the Kelloggs that

failure to comply with the herd reduction or with other court conditions could have serious consequences.

She told the Kelloggs that if they did not become "caring and responsible ranchers," her "next action just might include an auction sale and (an order) forbidding you to have any animals."

Grayson recently filed a motion to revoke Mary Kellogg's deferred sentence, citing allegations that she and her husband have continued to neglect animals on their ranch.

"According to Animal Warden John Siders, bodies of 10 horses (mostly colts), two calves, two dogs, and a goat were found by him on Feb. 12, 1992, during a court-approved check of the defendant's property," Grayson's motion alleged.

"Siders states that all of the animals are believed to have died since the court's judgment (in

December)," the motion added, a judgment that directed Kellogg to comply with official recommendations for the care and feeding of her horses.

Grayson's motion included other grounds for his petition to revoke Mary Kellogg's deferred sentence:

- That she allegedly failed to comply with a court order to submit evidence by Feb. 11 to Biggs that Kellogg had participated in an evaluation of her mental health.

- That Kellogg has not been feeding her horses enough hay based on recommendations for supplemental feeding resulting from a range analysis of her property by MSU professor John Lacey.

According to court records, Lacey reportedly determined that Kellogg's ranch could support only 44 mature horses year-round without supplemental feeding. Records show veterinarian Phil Murphy counted approximately 275 horses during a recent visit to the Kellogg

ranch.

Grayson alleges that calculations for supplemental feeding of Kellogg's horses suggest she should be supplying more than two tons of hay per day to properly feed her herd. But, Grayson's motion charged that Siders had "documented that the defendant is only feeding about one-half ton of hay per day total."

The Kelloggs were represented during their court appearance Thursday by attorney Kevin Vainio of Butte. Vainio argued that his clients attempted to comply with court conditions related to care of animals on their ranch.

"I would ask the court for leniency," Vainio said before sentencing. "They've tried to comply ... They've been working out there night and day trying to get these horses back into shape."

And Vainio argued that there are questions about why the horses on the ranch continue to be sick.

"We just don't have adequate proof about what the problem is out there with these animals," said, noting theories that the animals could be suffering because of "environmental toxicity" tainting the pasture where they graze.

Grayson countered that although the Kelloggs still owned "a manageable large herd" of acreage available for grazing.

Biggs agreed. She set three lines for the Kelloggs to meet reduction of their herd. By July 7, the herd must be down to 200 head; by May 30, down to 100 head; and by July 7, down to 50 head.

And Biggs told the Kelloggs the problems on their ranch concern both to local people and residents statewide.

"Your neighbors around here are concerned about the welfare of these animals," she said.

3-5-93
HB 323

Anaconda / Are

Area ranchers get jail time

For contempt
in not caring
for animals as
ordered by court

By Tina Vander Veer
Standard Staff Writer

Two Galen ranchers who have been accused of cruelty to animals were given jail sentences Thursday or not complying with a court order to properly care for horses, dogs and rabbits on their property.

After a five-hour hearing, Anaconda-Deer Lodge Justice of the Peace Lorraine Biggs found Mary Kellogg, 41, and her husband William Kellogg, 52, both of 1180 Yellowstone Trail, guilty of criminal contempt of court, a charge that carries a maximum six-month jail sentence and \$500 fine.

Monthly installments

Mary Kellogg was sentenced to five days in jail each month for the next six months, and William Kellogg was sentenced to three days in jail each month for the next six months.

They will have to pay the county \$20 in advance for each night they end in jail.

In a scathing speech from the bench, Biggs told the couple that they were impatient with their refusal to comply with court orders, and called their behavior "an absolute violation of humane treatment of animals."

'Sick to death'

"I'm sick to death of having to have you come in here," Biggs said.

Biggs ordered the Kelloggs to manage their range in a more effective way, reduce the number of horses on their property, and provide the court with a list of all the horses and owners of horses that are or have been on their ranch.

Biggs also set up a committee of interested groups, such as the Humane Society, to help the Kelloggs obtain adequate care for their animals.

Might lose rights

If the Kelloggs do not comply with the court's mandates, Biggs said she would consider stripping the couple of their right to own animals.

The Kelloggs and their lawyer, Kevin Vainio of Butte, argued that they have taken steps to decrease their herd size by taking about 30 head to Garrison and pasturing others in Gallatin County, leaving fewer than the mandated total of 100 horses on the Galen property.

But under cross-examination, Mary Kellogg said she did not know where in Gallatin County her horses are, nor how many horses were

moved there. She said she had no bills of sale for the animals, and that they weren't examined by the brand inspector before the move.

'Playing games'

Judge Biggs said that by taking horses out of the county rather than selling them as the court ordered, the Kelloggs were "playing games" with the court.

"You have deliberately misconstrued the court's order to release animals under your care by moving them to other counties," she said.

Biggs added that the apparent reduction in the horses' numbers did not free the Kelloggs from responsibility in the court's eyes.

"It's not just the numbers of these horses," she said. "I'm concerned about the care of these horses."

Vet testifies

Biggs' decision came after testimony from the county animal warden, a Phillipsburg veterinarian assigned by the court to inspect the animals on the ranch, Mary Kellogg herself, and a neighbor of the Kelloggs, Mark Jones.

The warden, John Siders, produced photos of a horse with a

large abscess running with pus, dogs in a muddy kennel, and dog food covered with mold, all taken at the ranch.

He testified that he counted as many as 177 horses on the ranch as late as Oct. 27, and said conditions hadn't improved on the ranch since the December court order.

'Fair shape at best'

The vet, Dr. Mark Ransford, said that most of the horses were in "fair shape at best" and that many of the younger or weaker horses were in worse condition than that.

"You could see ribs, you could see pinbones," he said. He added that the animals were lethargic and unalert.

"These horses weren't broken, but I could walk right through them," he said.

Some horses had skin growths, infections or swollen limbs and were in need of veterinary care, he said. Others showed signs of stunted growth or needed a farrier.

Dogs have worms

An autopsy of one six-year-old horse showed that the animal probably died of malnutrition, he said.

When he inspected the ranch's 70-old dogs in April, Dr. Ransford said he found them to be "thin to adequate," but infested with at least three kinds of worms.

The kennels were muddy, didn't provide shelter for the dogs and didn't provide adequate food and water for them, he said.

"The dogs were in the dirt and mud, with no way to get out of the dirt and mud," he said.

Barn called filthy

Dr. Ransford said the

collies had worms, claiming to worm them once a month with Ivermectin.

But when the veterinarian pointed out that Ivermectin, a stock dewormer, is often in collies, Kellogg said her dogs are a special strain of collies not cepible to the effects of Ivermectin.

Neighbor defends

The Kellogg's neighbor, Jones, testified that many rabbits at the ranch were bit that the Kelloggs adequately for their animals.

In closing arguments, I. County Attorney Mike Gi noted that Mary Kellogg refused to accept the opinions of veterinarian and range experts as valid, siding her own authority instead.

"She thinks everything is he said. "Mrs. Kellogg won knowledge this, and doesn't see there's any problem."

Afford to cruelty

In December, Mary Kellogg entered an Afford plea to a charge of cruelty to animals. In an Afford plea, the plaintiff does not plead guilty, but concedes that there is enough evidence to convict him or her.

At that time, Biggs issued an order, specifying that Mary Kellogg would have to feed and adequate care for all the animals on property within six months.

Those conditions were bolstered after both Kelloggs entered Afford pleas to new charges of cruelty to animals in February.

They were ordered to care for their 260-head herd.

ANACONDA

Calendar

- AA meets at 8 p.m. Friday in the basement of St. Peter's Church, Fourth and Alder streets.
- Well child clinics are held once a month at the Anaconda/Deer Lodge public health office. No charge for immunizations and anyone is eligible. Call 563-7863 or stop by 115 W. Commercial for an appointment.
- AA meets at 9 a.m. Saturday in the Marcus Railroad Building

Justice court

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Legal rights

Kelloggs do not comply
court's mandates. Biggs
ould consider stripping
their right to own ani-

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When he inspected the ranch's 70-
odd dogs in April, Dr. Ransford said
he found them to be "thin to ade-
quate," but infested with at least
three kinds of worms.

The kennels were muddy, didn't
provide shelter for the dogs and
didn't provide adequate food and
water for them, he said.

"The dogs were in the dirt and
mud, with no way to get out of the
dirt and mud," he said.

Barn called filthy

Dr. Ransford said the animals
that bothered him the most were
the 80 rabbits housed in one of the
ranch's barns.

The rabbits' hutches, stacked
four deep, didn't have trays cover-
ing the bottoms of each cage, so
that rabbits above could defecate on
rabbits below, he said.

The barn itself also was filthy, he
said. "When I walked into the room
of the rabbits, I could hardly
breathe, the smell of ammonia was
so overpowering," he testified.

Mary Kellogg attempted to pro-
vide explanations for all the evi-
dence presented against her.

Mary Kellogg speaks

She said the hutches smelled be-
cause they recently had been
cleaned of waste; that the horse's
abscess had been treated by a veteri-
narian and by herself; that her far-
rier had been injured and hadn't
been able to attend to the horses for
a year; that the stunted horses are
actually naturally-occurring pony-
sized American Saddlebred horses;
that the dogs' kennels were covered
with gravel twice a year and that
the animals had adequate shelter;
and the whitish material on the dog
food was not mold, but goat's milk.

Ivermectin.

But when the veterinarian
pointed out that Ivermectin, a live-
stock dewormer, is often fatal to
collies, Kellogg said her dogs were
a special strain of collies not sus-
ceptible to the effects of Ivermec-
tin.

Neighbor defends

The Kellogg's neighbor, Mark
Jones, testified that many of the
rabbits at the ranch were his, and
that the Kelloggs adequately cared
for their animals.

In closing arguments, Deputy
County Attorney Mike Grayson
noted that Mary Kellogg refused to
accept the opinions of veterinary
and range experts as valid, substit-
uting her own authority instead.

"She thinks everything is fine,"
he said. "Mrs. Kellogg won't ac-
knowledge this, and doesn't even
see there's any problem."

Alford to cruelty

In December, Mary Kellogg en-
tered an Alford plea to a charge of
cruelty to animals. In an Alford
plea, the plaintiff does not admit
guilt, but concedes that there is
enough evidence to convict him of a
crime.

At that time, Biggs issued a court
order, specifying that Mary Kellogg
would have to feed and adequately
care for all the animals on her
property within six months.

Those conditions were bolstered
after both Kelloggs entered Alford
pleas to new charges of cruelty to
animals in February.

They were ordered to reduce
their 250-head herd to 200 by April
30, 150 head by May 30, and 100
head by July 9.

Mary Kellogg was sentenced to
four days in jail for the offense.

ANACONDA

Calendar

Meets at 8 p.m. Friday in the basement of St. Peter's
Church, Fourth and Alder streets.
Well child clinics are held once a month at the Anaconda/Deer
public health office. No charge for immunizations and anyone
... Call 563-7863 or stop by 115 W. Commercial for an appoint-

Meets at 9 a.m. Saturday in the Rarus Railroad Building

Justice court

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DILLON
Georgia Thomas—
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or 1-800-877-1074
ext. 556

The Montana Standard

The Montana Standard

JP, police chief named

Couple's lawyer files writ of habeas corpus

By Frank Hamilton
Leader Staff Writer

Attorney Kevin Vainio filed a writ of habeas corpus in the Anaconda-Deer Lodge County Clerk of the District Court's office this week on behalf of Mary and William Kellogg.

The writ names Chief of Law Enforcement Jim Connors and Justice of the Peace Lorraine Biggs as the respondents. According to the writ, the sentences imposed on the Kelloggs for contempt of court exceed the legal limit and thus the writ asks that the remaining time on the sentences be dismissed.

Mary and William Kellogg were each sentenced in Anaconda-Deer Lodge County Justice Court to six months in jail

for criminal contempt for failure to abide by the conditions set by the court in November 1992 in connection with animal cruelty charges. Mary Kellogg was sentenced to serve her sentence five days at a time while William Kellogg was to serve his sentence three days at a time.

Biggs had ruled the Kelloggs to be in contempt of court for non-compliance with the conditions of their sentence. According to the court, the

Kelloggs did not file the veterinary reports they were ordered to file.

In addition, they did not have a planned grazing system and they did not supply a list of the animals in their possession and the names of their owners. Animal Warden John Siders stated that there were 14-98 head of horses on the property at the last count.

The writ alleges that there was never any formal charge made against the petitioners

charging them in writing as required by the Montana Criminal Code (MCA).

The writ also states that the three day and five day sentences per month are in excess of those contained in the section 3-10-404 of the MCA which states, "A justice may punish for contempts by fine or imprisonment or both; such fine not to exceed in any one case, \$100 and such imprisonment, 1 day."

The writ goes on to say that the petitioners have served more than one day in jail which is the maximum sentence allowable for contempt by the Justice of the Peace.

Because of these circumstances, the writ is asking that the remaining jail sentences be dismissed, the court award petitioner's costs and attorney fees, and grant any further relief it may deem appropriate.

EXHIBIT 1
DATE 3-5-93
HB 323

Ranchers claim jail, fines assessed unconstitutional

Two Deer Lodge Valley ranchers sentenced to fines and jail time for contempt when they did not comply with a court order to properly care for their horses are claiming they were unconstitutionally imprisoned.

Mary Kellogg was sentenced to five days in jail every month for six months and \$600 in fines. Her husband, William, was sentenced to three days in jail every month for six months and fined \$360.

Justice of the Peace Lorraine Biggs sentenced them Nov. 12, when she found they had failed to follow a court order to decrease the herd or provide reports of monthly veterinarian reports on the animals' condition.

The case began more than a year ago, when the county animal control officer reported some of the horses on the Kellogg land were starving.

Kevin Vainio, attorney for the Kelloggs, filed a writ of habeas corpus in district court Thursday alleging they have been imprisoned illegally. The action names Biggs and Anaconda-Deer Lodge Chief of Law Enforcement Jim Connors.

The Kelloggs were scheduled to begin serving jail time in December, but that was delayed because of illness, Connors said Thursday.

Vainio's filing says his clients never received any formal charges in writing, and he quotes state statutes that limit contempt sentences from justice court: "Such fine not to exceed in any one case, \$100 and such imprisonment, 1 day."

The Kelloggs have requested a hearing before a district court judge, and asked that the judge relieve them of "the unconstitutional and unlawful restraint on their liberty," and nullify the sentence.

Powell County court

DATE 3-5-93SENATE COMMITTEE ON J. Anderson

BILLS BEING HEARD TODAY:

HA 121 Fudge HA 323 MCL
NB 429 Stangor HB 582 Brown

Name

Representing

Bill
No.Check One
Support Oppose

Elmer A Brandt	Ans. DL County	323	✓	
Gary Fritz	DNRC	HB 121	✓	
Laurence Simey	DNRC	HB 121	✓	
Mark Rarstord	Flat Co. Valley 1st Civic	323	✓	
DAVE BROWN	Sponsor - HD#72	582	✓	
Augie Meyer	Self	582	✓	
Russell B Hill	Mont. Trial Lawyers Assn	HB 121	✓	
A. M. (Bud) Elwell	WCSM + NW WC	HB 582	✓	
Gene Gubille	Glennville MT	323	✓	
John Sides	Anaconda MT	323	✓	
Mike Grayson	Anaconda MT	HB 323	✓	
John Simey	DNRC	121	✓	
Bryan Lockard	Mont. Police Assoc.	HB 429	✓	
Mike Batista	Dept of Justice	HB 429	✓	
John Connor	MT County Att. Assn	HB 429	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 3-5-93

SENATE COMMITTEE ON JUDICIARY

BILLS BEING HEARD TODAY: HB 121, 323, 429, 582

Name	Representing	Bill No.	Check One Support Oppose
Sen Tom Bank	Self	HB 323	☒

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

MINUTES

**MONTANA SENATE
53rd LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By Senator Bill Yellowtail, on March 17, 1993, at 10:06 a.m.

ROLL CALL

Members Present:

Sen. Bill Yellowtail, Chair (D)
Sen. Steve Doherty, Vice Chair (D)
Sen. Sue Bartlett (D)
Sen. Chet Blaylock (D)
Sen. Bob Brown (R)
Sen. Bruce Crippen (R)
Sen. Eve Franklin (D)
Sen. Lorents Grosfield (R)
Sen. Mike Halligan (D)
Sen. John Harp (R)
Sen. David Rye (R)
Sen. Tom Towe (D)

Members Excused: NONE

Members Absent: NONE

Staff Present: Valencia Lane, Legislative Council
Kelsey S. Chapman, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: HB 307, HB 272, HB 411
Executive Action: HB 307, HB 272, HB 258, HB 429, HB 323,
HB 121

HEARING ON HB 307

Opening Statement by Sponsor:

Representative Roger Debruycker, House District 13, told the Committee HB 307 would clarify that the Department of Justice would have the authority to change the games at a fair. Presently every time a game involving gambling is brought into Montana, it must be approved by the Legislature. HB 307 would provide the Attorney General with the authority to approve of the game. Representative Debruycker passed out proposed amendments

EXECUTIVE ACTION ON HB 323Discussion:

Valencia Lane explained Senator Grosfield was concerned about the effective date of HB 323, and thought there should be an immediate effective date. She explained she combined Senator Grosfield's proposed amendment to change the effective date with Senator Towe's amendment to provide for applying for an injunction to restrain the ownership of animals.

Motion:

Senator Grosfield moved amendments (hb032301.avl) be adopted.

Discussion:

Senator Towe told the Committee the purpose of his amendment was to solve procedural concerns he had. He said if there was going to be a denial of right to own an animal there should be a hearing on this fact. The person should not be denied this right solely on the basis that the person was convicted of animal abuse. He said the county attorney may apply for an injunction to restrain ownership, possession, or custody once there has been a conviction. If there is proof the person is not capable of adequately taking care of the animal, then the court may require the person to forfeit the animal. He said the concept was that once there was a conviction, there would be a petition to the court expressing that the convicted person should not have other animals. He said there must be evidence presented at the hearing to prove that the person is incapable or unwilling to adequately care for the animals mentioned in the petition.

Senator Halligan said the intent of the amendment was good, but many times the need was immediate, and if a conviction was waited for, it could take days or months.

Senator Towe asked if Senator Halligan would rather take away the right of a person to own an animal before the conviction of abuse or neglect. Senator Halligan answered there should be a pre-conviction option.

Senator Towe said that the point of severity of abuse and immediate need was understood, and that a subsection should be added that would allow the county attorney to seek the injunction before conviction.

Senator Halligan said there should be a civil law. Senator Towe said most of these laws were local ordinances.

Senator Halligan asked why the county must wait for the second subsequent offense to go in and get an injunction. He expressed if the first case was severe enough there should be that option.

If the county could not prove by a preponderance of evidence that the injunction was needed, then the injunction would not carry.

John Connor told the Committee that in the House, there was testimony that an injunction provision would allow the State to extend the control over the defendant's ownership of animals beyond the time of sentence. He said he did not think there could be control of the defendant by injunction or otherwise longer than what the court imposes a sentence for. He said if a person is convicted of cruelty to animals and the court imposes a six month suspended sentence, then any subsequent injunction provision could only exist for the period of the sentence.

Senator Towe told the Committee his original request was to amend the Bill to have the injunction completely separate from conviction. Valencia Lane explained that a criminal statute which creates a penalty for a crime. In this situation, amending the Bill to provide for an injunction completely separate from conviction could lead to a loophole for the defendant.

Senator Yellowtail said if it was the Committee's intent to pursue the notion of an injunction prior to conviction, then perhaps the amendment should be reconsidered, and action delayed.

Senator Towe said his preference would be to divorce the notion of the injunction from the criminal proceeding provided for in HB 323. He said he would prefer to authorize the county attorney to get a preliminary injunction, temporary restraining order, or permanent injunction when the attorney could prove with the facts available that a person is incapable of owning an animal. He said this would not deal with the criminal conviction.

Senator Yellowtail asked if it was possible to do this under the title of HB 323. Valencia Lane told Senator Yellowtail if the title was amended so as not to be completely away from the original intent, it could be amended and accepted. She said if there was a defect in the title, the statute of limitations on changing the error was only 2 years.

Senator Bartlett asked if it was a concern as to who would gain custody of the animals taken from abusive owners. Senator Bartlett asked if the State Department of Agriculture would be taking large animals. Mr. Connor answered that in one instance, where nine horses were starving, the county took the horses into possession as evidence and worked to find a place to keep them. Convicting the person on nine different charges of cruelty, each sentence for 4 months in jail, the court took the horses and sold them through the Department of Livestock. The money came back to the county. He said that in terms of Senator Towe's consideration of injunction, the animals could be taken as evidence.

The action on HB 323 was delayed.

ROLL CALL

SENATE COMMITTEE

Judiciary

DATE

3/17/93

NAME	PRESENT	ABSENT	EXCUSED
Senator Yellowtail	X		
Senator Doherty	X		
Senator Brown	X		
Senator Crippen	X		
Senator Grosfield	X		
Senator Halligan	X		
Senator Harp	X		
Senator Towe	X		
Senator Bartlett	X		
Senator Franklin	X		
Senator Blaylock	X		
Senator Rye	X		

FC8

Attach to each day's minutes

MINUTES

**MONTANA SENATE
53rd LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By Senator Bill Yellowtail, on March 27, 1993, at 3:10 p.m.

ROLL CALL

Members Present:

Sen. Bill Yellowtail, Chair (D)
Sen. Steve Doherty, Vice Chair (D)
Sen. Sue Bartlett (D)
Sen. Chet Blaylock (D)
Sen. Bob Brown (R)
Sen. Eve Franklin (D)
Sen. Lorents Grosfield (R)
Sen. Mike Halligan (D)
Sen. John Harp (R)
Sen. Tom Towe (D)

Members Excused: Sen. Crippen, Sen. Rye

Members Absent: NONE

Staff Present: Valencia Lane, Legislative Council
Rebecca Court, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: NONE
Executive Action: HB 405
HB 121
HB 323
HB 335
HB 482
HB 576
HB 216

EXECUTIVE ACTION ON HB 405

Discussion:

Senator Towe explained amendment hb040504.av1.

Motion:

is the best way to meet the water needs to solve the problem, then it should be accurately pursued.

Senator Doherty suggested striking subsection 2.

Chair Yellowtail said subsection 2 relates to the issue of liability.

Senator Halligan said subsection 2 ties HB 121 in with the Montana Dam Safety Act.

Senator Towe agreed with Senator Halligan. Senator Towe does not feel there would be a problem if subsection 2 was left in.

Vote:

The motion to amend HB 121 CARRIED UNANIMOUSLY.

Motion/Vote:

Senator Grosfield moved HB 121 BE CONCURRED IN AS AMENDED. The motion CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON HB 216

Discussion:

Senator Doherty asked the Committee to reconsider the action taken in adopting the amendments for HB 216. The amendments suggested by Senator Towe struck the language "of cost of doing business." The petroleum marketers brought HB 216 forward and they feel the amendments disrupt the intent of HB 216 therefore making it difficult to enforce.

Motion/Vote:

Senator Doherty moved to RECONSIDER HB 216. The motion to reconsider CARRIED UNANIMOUSLY.

Motion/Vote:

Senator Doherty moved to STRIKE amendment hb021602.avl from HB 216 which was adopted March 26, 1993. (Exhibit 4) The motion CARRIED with Senators Grosfield, Towe, Bartlett, and Yellowtail voting NO.

Motion/Vote:

Senator Doherty moved HB 216 BE CONCURRED IN AS AMENDED. The motion CARRIED with Senator Grosfield voting NO.

EXECUTIVE ACTION ON HB 323

Motion:

Senator Halligan moved to TABLE HB 323.

Discussion:

Senator Halligan told the Committee that existing law covers cruelty to animals. County attorneys could charge a person with several counts of cruelty to receive multiple consecutive sentences.

Vote:

The motion to table HB 323 CARRIED with Senators Doherty and Grosfield voting NO.

EXECUTIVE ACTION ON HB 335

Motion:

Senator Harp moved to TABLE HB 335.

Discussion:

Valencia Lane told the Committee that there is a conflict between HB 335 and HB 228. A coordination instruction needs to be amended on HB 335. Ms. Lane said if HB 335 is tabled in Committee, the coordination instructions should be included if it were ever to be removed from the table.

Motion/Vote:

Senator Towe made a substitute motion to AMEND HB 335. (Exhibit #5) The motion CARRIED UNANIMOUSLY.

Motion/Vote:

Senator Harp moved to TABLE HB 335. The motion FAILED with Senator Towe and Harp voting YES.

Vote:

Senator Bartlett moved to AMEND HB 335. (Exhibit #6)

Discussion:

Senator Bartlett explained amendment hb033504.avl.

Senator Towe spoke in favor of the amendments.

Vote:

The motion to amend HB 335 CARRIED UNANIMOUSLY.

ROLL CALL

SENATE COMMITTEE

Judiciary

DATE 3-27-93

NAME	PRESENT	ABSENT	EXCUSED
Senator Yellowtail	X		
Senator Doherty	X		
Senator Brown	X		
Senator Crippen			X
Senator Grosfield	X		
Senator Halligan	X		
Senator Harp	X		
Senator Towe	X		
Senator Bartlett	X		
Senator Franklin	X		
Senator Blaylock	X		
Senator Rye			X

FC8

Attach to each day's minutes

SENATE STANDING COMMITTEE REPORT

Page 1 of 2
April 13, 1993

Page 2 of 2
April 13, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 323 (third reading copy -- blue), respectfully report that House Bill No. 323 be amended as follows and as so amended be concurred in.

Signed: William Yellowtail
Senator William "Bill" Yellowtail, Chair

That such amendments read:

1. Title, line 5.
Strike: "SECOND OR SUBSEQUENT"

2. Title, line 6.
Strike: "ENJOIN"
Insert: "PROHIBIT"
Following: "DEFENDANT'S"
Strike: "FURTHER"

3. Title, line 8.
Following: "APPROPRIATE"
Insert: "DURING THE TERM OF THE SENTENCE"
Following: ";"
Strike: "AND"
Following: "MCA"
Insert: "; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE"

4. Page 2, line 7.
Following: "(2)"
Insert: "(a)"

5. Page 2, line 12.
Following: "the"
Strike: "county jail"
Insert: "state prison"
Following: "exceed"
Strike: "1"
Insert: "2"

6. Page 2, line 13.
Strike: "year"
Insert: "years"
Following: "both."
Insert: "(b)"
Following: first "the"
Insert: "convicted"

7. Page 2, line 23.

Following: "(b)"
Strike: "upon a second or subsequent conviction, enjoin"
Insert: "prohibit"

8. Page 2, line 24.
Following: "defendant's"
Strike: "further"

9. Page 2, line 25.
Following: "appropriate"
Insert: "during the term of the sentence"

10. Page 3.
Following: line 5
Insert: "NEW SECTION. Section 2. Effective date. [This act] is effective on passage and approval."

-END-

AM Amd. Coord.
IN Sec. of Senate

Halligan
Senator Carrying Bill

811359SC.San

SENATE

HB 323
811359SC.San

HOUSE BILL NO. 323

INTRODUCED BY MCCARTHY, BECK, MENAHAN, RYAN,
REAM, M. HANSON, SMITH, SPRING, L. NELSON,
ENDY, LYNCH, HARRINGTON, QUILICI, GILBERT,
D. BROWN, DAILY, GRADY, PAVLOVICH, GRINDE

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING A COURT, UPON
A ~~SECOND-OR-SUBSEQUENT~~ CONVICTION OF CRUELTY TO ANIMALS, TO
~~ENJOIN PROHIBIT~~ OR LIMIT THE DEFENDANT'S FURTHER OWNERSHIP,
POSSESSION, OR CUSTODY OF ANIMALS, AS THE COURT BELIEVES
APPROPRIATE DURING THE TERM OF THE SENTENCE; AND AMENDING
SECTION 45-8-211, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE
DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 45-8-211, MCA, is amended to read:

"45-8-211. Cruelty to animals -- exception. (1) A
person commits the offense of cruelty to animals if without
justification he the person knowingly or negligently
subjects an animal to mistreatment or neglect by:

(a) overworking, beating, tormenting, injuring, or
killing any animal;

(b) carrying or confining any animal in a cruel manner;

(c) failing to provide an animal in ~~his~~ the person's
custody with:

(i) proper food, drink, or shelter; or
(ii) in cases of immediate, obvious, serious illness or
injury, licensed veterinary or other appropriate medical
care;

(d) abandoning any helpless animal or abandoning any
animal on any highway, railroad, or in any other place where
it may suffer injury, hunger, or exposure or become a public
charge; or

(e) promoting, sponsoring, conducting, or participating
in an animal race of more than 2 miles, except a sanctioned
endurance race.

(2) (A) A person convicted of the offense of cruelty to
animals shall be fined not to exceed \$500 or be imprisoned
in the county jail for a term not to exceed 6 months, or
both. A person convicted of a second or subsequent offense
of cruelty to animals shall be fined not to exceed \$1,000 or
be imprisoned in the ~~county-jail~~ STATE PRISON for a term not
to exceed ~~1~~ 2 year YEARS, or both.

(B) If the CONVICTED person is the owner, he the person
may be required to forfeit to the county in which he the
person is convicted any animal affected. This provision does
not affect the interest of any secured party or other person
who has not participated in the offense.

(3) In addition to the sentence provided in subsection
(2), the court may:

1 (a) require the defendant to pay all reasonable costs
2 incurred in providing necessary veterinary attention and
3 treatment for any animal affected; and

4 (b) ~~upon--a--second--or--subsequent--conviction, enjoin~~
5 PROHIBIT or limit the defendant's further ownership,
6 possession, or custody of animals, as the court believes
7 appropriate DURING THE TERM OF THE SENTENCE.

8 (4) Nothing in this section prohibits:

9 (a) a person from humanely destroying an animal for
10 just cause; or

11 (b) the use of commonly accepted agricultural and
12 livestock practices on livestock."

13 NEW SECTION. SECTION 2. EFFECTIVE DATE. (THIS ACT) IS
14 EFFECTIVE ON PASSAGE AND APPROVAL.

-End-